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A DIGEST

OF

INDIAN LAW CASES

1890–1893.

A DIGEST OF INDIAN LAW CASES;

CONTAINING

HIGH COURT REPORTS

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1890—1893.

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WITH AN INDEX OF CASES.

COMPILED BY

JOSEPH VERE WOODMAN,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND ADVOCATE OF THE HIGH COURT, CALCUTTA.

CALCUTTA:

THACKER, SPINK & CO.

1894.

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PREFACE.

THIS Volume is published with the permission of the Government of India, and is a continuation of the Volume published by me in 1890. It brings the cases up to the end of 1893, and in the case of the Calcutta Series of Reports up to the number for June 1894. Taken together with the Digest in five Volumes compiled by me for the Government of India and with the Volume of cases from 1887 to 1889, this Volume completes a Digest of the whole of the Reports in the four High Courts from 1862 to 1893, and of the Privy Council cases from 1836 to 1893.

CALCUTTA,
September 24th, 1894.

J. V. W.

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ERRATA AND CORRIGENDA.

Col. 33, case 31. reference to case *for* " 420 " *read* " 520."

Col. 68, reference to case *for* " I. L. R. 17 I. A." *read* " L. R. 17 I. A."

Col. 452, reference to case *for* " I. L. R. 17 I. A." *read* " L. R. 17 I. A."

Col. 480 top of column *for* " Hindu Law, Widow " *read* " Hindu Law—Will.

Col. 521 under heading " Joinder of Causes of Action " insert [" *Civil Procedure Code s.* 44—*Suit for mortgage debt with alternative prayer for sale.*] A suit for recovery of a mortgage debt with an alternative prayer for sale of the mortgaged property, is not a suit for recovery of immoveable property within the meaning of s. 44 of the Civil Procedure Code. GOVINDA *v.* MANA VIKRAMAN MANA VIKRAMAN *v.* GOVINDA.

[I. L. R. 14 Mad. 284."

Col. 698 *for* " 998 " *read* " 698 " for number of column.

Col. 1130 top of column *for* " Vendor of Jury " *read* " Verdict of Jury.'

Col. 1137, case 1, name of case *for* " Harilal " *read* " Harilal Harjivandas."

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OF

THE HIGH COURT REPORTS,

AND OF

THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA.

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[I. L. R. 13 Mad. 172

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See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 17 Calc. 642

1.—*Informer cognizant of offence—Omission to disclose commission of offence.*] Where an informer was, upon his own statement, cognizant of the commission of an offence. and omitted to disclose it for six days, the Court was not prepared to say that he was an accomplice; but held that his testimony was not such as to justify a conviction except where it was corroborated. ISHAN CHANDRA CHANDRA *v.* QUEEN-EMPRESS.

[I. L. R. 21 Calc. 328

2.—*Evidence of an accomplice—Necessity of corroboration—Compulsion an excuse for crime—Pretence as evidence of common intention—Fear of instant death—Penal Code (Act XLV of* 1860), *ss.* 34 *and* 94—*Evidence Act (I of* 1872), *s.* 133 —*Power of High Court in Revision.*] The accused, who were classers employed in the Revenue Survey Department, were charged, under s. 161 of the Penal Code, with taking bribes from the ryots of certain villages. The only evidence against the accused was that of persons who had either subscribed to the bribes or collected subscriptions or paid the money to the accused. They stated that they had offered the bribes, because the classers had threatened to raise the assessment, cut down the hedges, and erect new boundary-marks. As regards this evidence, the trying Magistrate remarked that, even if all the witnesses for the prosecution were treated as accomplices, it was open to him to convict on their uncorroborated testimony, as "there was inherent truth in their statements, and circumstances existed which negatived the presumption of a conspiracy, and evidenced signs of truthfulness." The Magistrate was also of opinion that there was a distinction between accomplices who volun-

ACCOMPLICE—*continued.*

teered to assist in the receipt of illegal gratifications and those who assisted under compulsion. In the opinion of the Magistrate, the witnesses in the present case belonged to the latter class, and there was no reason to disbelieve their evidence. He, therefore, convicted the accused under s. 161 of the Penal Code, and sentenced them to rigorous imprisonment and fine:—*Held*, (SCOTT, J., dissenting,) that the convictions were illegal, there being no evidence to corroborate the witnesses for the prosecution, all of whom were accomplices. *Held*, also (SCOTT, J., dissenting,) that there was such error in the consideration by the Magistrate of the evidence as to prejudice the accused, and such a failure of justice as to justify the Court in revision in setting aside the convictions. *Per* CURIAM:—The limits of the application of the doctrine of necessity as an excuse for an act otherwise criminal, are those prescribed in s. 94 of the Penal Code. Therefore witnesses who, in order to avoid pecuniary injury or personal molestation, had offered or given bribes to a public servant were abettors of the offence of taking an illegal gratification, and their evidence should be treated as that of accomplices. By the law both of India and England the evidence of an accomplice is admissible, and a conviction is not illegal because it proceeds upon the uncorroborated testimony of an accomplice; (s. 133 of the Evidence Act I of 1872) But the presumption that an accomplice is unworthy of credit, unless corroborated in material particulars, has become a rule of practice of almost universal application. *Per* SCOTT, J.:—There may be, however, cases of an exceptional character in which the accomplice evidence alone convinces a Judge, and if he acts on that conviction, with the character of the witnesses clearly present in his mind, a Revisional Court ought not to interfere, in the absence of other circumstances showing a want of judicial discretion. *Per* JARDINE, J.:—The mere circumstance of a person being present on a lawful occasion does not raise a presumption of that person's complicity in an offence then committed so as to make s. 34 of the Penal Code applicable—*Reg.* v. *Farler* (8 C. & P., 106). Where the Magistrate on that ground did make that presumption against an accused person, and applied the provisions of s. 34, he committed an error in law, and the High Court, as a Court of Revision, might acquit the accused. QUEEN-EMPRESS *v.* MAGANLAL.

[I. L. R. 14 Bom. 115

3.—*Evidence Act* (*I of* 1872), *ss.* 114 *and* 133—*Public Officer, offer of bribe to—Corroboration.*] A person who offers a bribe to a public officer is an accomplice. *Per* BIRDWOOD, J.:—A conviction is not illegal merely because it proceeds on the uncorroborated evidence of an accomplice. Such evidence, being admissible, furnishes as legal a basis for a conviction as any other evidence which is admissible. The omission to follow the established rule of practice as to the corroboration of such evidence does not constitute an error in law; but where the evidence of an accomplice

ACCOMPLICE—*concluded.*

is not of a character to warrant the refusal of a Court to apply to it the maxim enunciated in illustration (*b*) of s. 114 of the Evidence Act (I of 1872), a conviction based on such evidence alone would be of questionable propriety. *Per* JARDINE, J., ss. 114 and 133 of the Evidence Act (I of 1872) are to be read together, and neither section is to be ignored in the exercise of judicial discretion. The illustration (*b*) of s. 114—"that the Court may presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars"—is, however, the rule, and when it is departed from, the Court should show, or it should appear that the circumstances justify, such departure. Accordingly, where a conviction was based solely on the evidence of accomplices, and the circumstances connected with the preparation and conduct of the case, as disclosed by the record, and portions also of the evidence adduced at the trial, showed that it would not be proper to act on that evidence, the Court set aside the conviction. QUEEN-EMPRESS *v.* CHAGAN DAYARAM.

[I. L. R. 14 Bom. 331

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[I. L. R. 19 Calc. 174

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[I. L. R. 19 Calc. 322

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[I. L. R. 20 Calc. 847

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[I. L. R. 16 Bom. 351

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[I. L. R. 20 Calc. 425

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[I. L. R. 16 Mad. 339

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[I. L. R. 16 Mad. 238

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[I. L. R. 16 Mad. 339
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[I. L. R. 15 Mad. 127

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[I. L. R. 21 Calc. 496

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[I. L. R. 14 Bom. 428

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[I. L. R. 21 All. 233

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[I. L. R. 17 Calc. 590

—New formation of alluvial lands—Rivers or change in course of rivers—Tidal navigable river—Cause and nature of variation in high water line.] The rules of English law, according to which the rights of the Crown or of riparian owners to accretions caused by alluvion are determined with reference to the character of the river and the manner in which the accretion is occasioned, are applicable in British India unless excluded by enactment or local usage. Accordingly, where a rapid variation in the natural high water line of a tidal navigable river in Malabar had been caused by acts unlawfully done by the tenants of the riparian owner:—*Held*, that the Crown was entitled as against the riparian owner to the accretion caused by such variation. SECRETARY OF STATE FOR INDIA *v.* KADIRIKUTTI.

[I. L. R. 13 Mad. 369

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[I. L. R. 20 Calc. 433

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[I. L. R. 15 All. 396

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[I. L. R. 14 Bom. 511

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[I. L. R. 14 Mad. 258

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[I. L. R. 13 Mad. 135

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[I. L. R. 15 All. 56

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[I. L. R. 17 Bom. 173

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[I. L. R. 16 Bom. 705

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[I. L. R. 17 Bom. 736

See MORTGAGE—SALE OF MORTGAGED PROPERTY—MORTGAGEES RIGHTS OF.

[I. L. R. 14 Bom. 506

—Equitable Estoppel—Landlord and tenant—Lessee taking lease direct from zamindar—Suit by occupancy-tenant to eject zamindar's lessee.] Where a person took a permanent lease of a cultivatory holding direct from the zamindar without making any inquiries as to who were the cultivators and on what tenure they held; and where, the permanent lessee having commenced to build, one of the cultivators, being an occupancy-tenant, subsequently brought a suit in ejectment against him:—*Held* that the lessee should, by the knowledge that the land was a cultivatory holding, have been put on his guard and have made inquiries as to the exact condition of the title, and not having done so the doctrine of equitable acquiescence could not be applied. BISHESHAR *v.* MUIRHEAD.

[I. L. R. 14 All. 362

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See CASES UNDER REVISION—CRIMINAL CASES—ACQUITTALS.

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[I. L. R. 14 Bom. 213

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[I. L. R. 14 Bom. 213

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[I. L. R. 15 Bom. 441

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[I. L. R. 14 Bom. 372

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[I. L. R. 16 Mad. 229

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[I. L. R. 14 Mad. 121

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[I. L. R. 14 Mad. 365

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See INTEREST ACT.

——, 1841—X.

See MERCHANT SHIPPING ACT, 1854, ss. 24, 26.

[I. L. R. 14 Bom. 170

——, 1844—XIX.

See CESS.

[I. L. R. 14 Bom. 526

——, 1846—XI.

See APPEAL IN CRIMINAL CASES—ACTS—ACT XI OF 1846.

[I. L. R. 15 Bom. 505

ACT, 1847—IX.

—Assessment, to revenue, finality of, upon land within an estate permanently settled—Non-liability to assessment of alluvial land re-formed within such an estate, no abatement having been made on account of previous diluvion—Jurisdiction of the Civil Courts in regard to orders of revenue authorities.] A review of the legislation anterior to Act IX of 1847 shows that whilst it was intended to bring under assessment lands not included in the permanent settlement, whether waste or gained by alluvion or dereliction from sea or rivers, yet all such lands as were comprised in permanently-settled estates were to be rigorously excluded from further assessment. Lands included in the permanent settlement having afterwards been covered by water, and having then been formed again on the same site, *held* not to be lands "gained" from the river by alluvion or dereliction within the meaning of Regulation II of 1819, that expression being confined to meaning lands gained since the period of the settlement. The effect of Act IX of 1847 was merely to change the mode of assessment in the case of land already liable to be assessed under legislation in force when that Act became law. It was not the object of that Act to bring under liability land re-formed on the site of land previously lost, within the area of a permanently-settled estate, the revenue upon which had been paid without abatement since the permanent settlement. Where an order of the Board of Revenue, purporting to be made under Act IX of 1847, subjected land included in the permanent settlement to assessment, *held* that the District Civil Court had jurisdiction (which, therefore, might be invoked as a matter of right) to entertain a suit brought by the landowner contesting that order, and to declare it unauthorised by law. SECRETARY OF STATE FOR INDIA *v.* FAHAMIDANNISSA BEGUM.

[I. L. R. 17 Calc., 590

[L. R. 17 I. A. 40

Affirming FAHAMIDANNISSA BEGUM *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL.

[I. L. R. 14 Calc. 67

ACT, 1847—XX.

See COPYRIGHT.

[I. L. R. 14 Bom. 586

——, 1850—XVIII.

See CASES UNDER JUDICIAL OFFICERS LIABILITY OF.

——, 1850—XXI.

See HINDU LAW — INHERITANCE—DIVESTING OF, EXCLUSION FROM AND FORFEITURE OF INHERITANCE.

[I. L. R. 19 Calc. 289

——, 1852—XI, s. 7.

See JURISDICTION OF CIVIL COURT—CUSTOMARY PAYMENTS.

[I. L. R. 16 Bom. 649

ACT, 1855—XIII.

See NEGLIGENCE.

[I. L. R. 16 Bom. 254

——, 1855—XXXVII.

See TRANSFER OF CRIMINAL CASE.

[I. L R. 18 Calc. 247

————, s. 2.

See SONTHAL PERGUNNAHS SETTLEMENT.

[I. L. R. 18 Calc. 123

——, 1856—XV, s. 2.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM AND FORFEITURE OF INHERITANCE.

[I. L. R. 19 Calc. 289

————, s. 5.

See JURISDICTION OF CIVIL COURT—CASTE.

[I. L. R. 13 Mad. 293

——, 1858—XXXI.

See SETTLEMENT—EFFECT OF SETTLEMENT.

[I. L. R. 20 Calc. 732

——, 1858—XXXV.

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM AND FORFEITURE OF INHERITANCE.

[I. L. R. 18 Calc. 111

See LUNATIC.

[I. L. R. 14 Mad. 289

[I. L. R. 15 All. 29

[I. L. R. 16 Bom. 132

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS.

[I. L. R. 15 Bom. 177

——, 1858—XL.

See DISTRICT JUDGE, JURISDICTION OF.

[I. L. R. 13 All. 78

See GUARDIAN—APPOINTMENT.

[I. L. R. 19 Calc. 301

See MINOR—BOMBAY MINORS ACT (XX OF 1864.)

[I. L. R. 15 Bom. 259

——, 1858—XL—Certificate under.

See EVIDENCE ACT, s. 35.

[I. L .R. 17 Calc. 849

See GUARDIAN—APPOINTMENT.

[I. L. R. 13 All. 78

ACT, 1858—XL— s. 3.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 17 Calc. 347

————, s. 7.

See GUARDIAN—APPOINTMENT.

[I. L. R. 13 All. 78

————, s. 12.

See MAJORITY ACT, s. 3.

[I. L. R. 17 Calc. 944

——, 1859—IX, s. 20.

See LIMITATION (ACT IX OF 1859).

[I. L. R. 13 All. 108

——, 1859—X.

See BENGAL RENT ACT, 1859.

——, 1859—XI.

See PUBLIC DEMANDS RECOVERY ACT, s. 2.

[I. L. R. 21 Calc. 350

See PUBLIC DEMANDS RECOVERY ACT, ss. 21, 22.

[I. L. R. 17 Calc. 414

See CASES UNDER SALE FOR ARREARS OF REVENUE.

————, s. 5.

See PUBLIC DEMANDS RECOVERY ACT, s. 10.

[I. L. R. 20 Calc. 325

————, s. 17.

See PUBLIC DEMANDS RECOVERY ACT, s. 10.

[I. L. R. 20 Calc. 325

————, s. 31.

See LIMITATION ACT, 1877, s. 10.

[I. L. R. 18 Calc. 234

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 20 Calc. 51

————, s. 36.

See BENAMI TRANSACTION—CERTIFIED PURCHASERS.

[I. L. R. 21 Calc. 375

——, 1859—XXIV.

See MADRAS POLICE ACT.

————, s. 48.

See BENCH OF MAGISTRATES.

[I. L R. 13 Mad. 142

[I .L. R. 15 Mad., 132

ACT, 1859—XIII.

1.—*Criminal breach of contract—Labourer—Carrier by boat.*] An advance was made under a contract by which the party who received the advance undertook to convey salt by boat, but did not bind himself to render personal labour. The party who received the advance broke the contract:—*Held*, the parties to the contract were not an employer of labour and a labourer respectively, and consequently, the contract did not fall within the provisions of Act XIII of 1859. CALURAM *v.* CHENGAPPA.

[I. L. R. 13 Mad. 351

2.—*Jurisdiction of Magistrates to interfere in cases of wilful and fraudulent breach of contract—Meaning of the expression "Advance of money on account of work."*] Act XIII of 1859 (an Act to provide for the punishment of breaches of contract by artificers, workmen and labourers in certain cases) applies only where there has been an advance of money on account of any work, which words do not include mere loans or old debts. The interference of the Magistrate under the Act is limited to cases where the neglect or refusal to perform is wilful and without lawful and reasonable excuse. As a rule, a mere breach of contract ought not to be an offence, but only to be the subject of a civil action: and a man cannot be treated as a criminal for not performing a contract which could not be enforced against him by civil process. QUEEN-EMPRESS *v.* RAJAB.

[I. L. R. 16 Bom. 368

3.—s. 2.—*Limitation of civil claim—Order by the Magistrate for repayment of advances.*] In a prosecution for breach of contract under Act XIII of 1859, it appeared that the complainant had advanced certain sums of money to the accused, but that a suit to recover the same was barred by limitation; and the Magistrate thereupon dismissed the charge:—*Held*, that there was no reason why the Magistrate should not have ordered repayment to be made by the accused under s. 2. QUEEN-EMPRESS *v.* KONDA.

[I. L. R. 16 Mad. 347

4.—s. 2.—*Breach of contract of service—Statute 4, Geo. IV, Cap. 34, s. 3.—Autrefois convict.*] A conviction for breach of contract of service under s. 2, Act XIII of 1859, is a bar to any subsequent conviction on the same contract for a further breach for not returning to service GRIFFITHS *v.* TEZIA DOSADH.

[I. L. R. 21 Calc. 262

ACT, 1860—XXVII.

See APPEAL—CERTIFICATE OF ADMINISTRATION.

[I. L. R. 20 Calc. 245, 641

See REPRESENTATIVE OF DECEASED PERSON.

[I. L. R. 16 Mad. 405

ACT, 1860—XXVII, s. 2.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R. 15 Bom. 105

——, s. 5.

See RIGHT OF SUIT—CONTRACTS OR AGREEMENTS.

[I. L. R. 14 Mad. 473

——, 1860—XXXVI, s. 13.

See STAMP ACT, 1879, s. 34.

[I. L. R. 14 Mad. 255

——, 1860—XLV.

See PENAL CODE.

——, 1860—XLVIII.

See POLICE ACT.

——, 1861—IX.

See MINOR—CUSTODY OF MINORS.

[I. L. R. 12 All. 213

——, 1861—XXIII, s. 10.

See INTEREST—OMMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—DECREES.

[I. L. R. 18 Calc. 164

——, 1862—X, s. 15.

See STAMP ACT, 1879, s. 34.

[I. L. R. 14 Mad. 255

——, 1863—XX, s. 7.

See RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO.

[I. L. R. 13 Mad. 277

——, s. 14.

See ENDOWMENT.

[I. L. R. 14 Mad. 1

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT.

[I. L. R. 16 Mad. 490

——, s. 14 and ss. 3 and 4—*Hereditary trusteeship—Suspension from trusteeship and right of puja—Maintenance in office on terms.*] Suit by certain *dikshadars* or hereditary trustees of the Chitambaram temple against others of the *dikshadars* praying for their removal from office and for a money decree alleging that they had been jointly guilty of misconduct in respect of temple property in their custody and had obstructed the repair of certain shrines. The District Judge passed a decree suspending some of the defendants from the office of trustee and the right of *puja* for a period which was not defined; he also passed a decree for the money claimed:—*Held*, that the operation of Act XX of 1863 was not excluded by the admission that the trusteeship was hereditary in certain families; and that the District Judge had jurisdiction under Act XX of 1863 to deprive

ACT 1863—XX, s. 14—*concluded.*

the defendants of the right of *puja*. *Held*, further, on the evidence, that the defendants merited the punishment which had been inflicted on them. Decreed that the suspension of the defendants be withdrawn on the terms that they file an undertaking with two sureties that they would restore certain property belonging to the temple now missing, and that they would duly conform to the decision of the majority of *dikshadars* as to the management of temple affairs, &c. NATESA *v.* GANAPATI.

[I L. R. 14 Mad. 103

——, s. 14, and ss 16 and 18—*Endowment—Endowment for benefit of family idol—Suit to remove shebaits from office—Arbitration, reference to—Bengal Regulation XIX of* 1810]. Act XX of 1863 does not apply to an endowment which is not a public one, but which is made for the benefit of an ancestral family idol. Two plaintiffs, members of a Hindu family, applied for and (in the presence of the defendants) obtained leave to institute a suit against the defendants, who were the *shebaits* of a certain idol, for the purpose of having them removed from their office, on the ground of misconduct. In their plaint they alleged that the endowment was a public one, all Hindus having a common right of worshipping the idol. This was denied by the defendants. After issues had been framed, the Court of First Instance made an order, under s. 16 of the Act, referring certain of them to arbitration, although the defendants contended that, as the endowment was not a public one, the Act had no application, and objected to the reference. The arbitrators made an award finding, *inter alia*, that the idol was the ancestral family idol of the parties to the suit, and that the endowment was not made for the benefit of the public. They further in their award laid down certain definite rules according to which the *sheba* ought to be conducted, and repairs to the temple made. The Court of First Instance passed a decree on that award, declaring that the idol was the ancestral idol of both parties, and directing that the defendants should perform the worship in a certain manner, and should execute certain repairs to the temple within six months, and declaring that if the parties did not act as directed, any member of the family should be able to bring a suit for the appointment of a manager. Against that decree the defendants appealed, and contended that the Act did not apply to the case on the finding of fact as to the endowment not being a public one; that the compulsory reference to arbitration was illegal and void, and that the decree was not one authorised by the terms of s. 14 of the Act:—*Held*, that on the facts as found by the arbitrators, Act XX of 1863 did not apply to the case, and that the compulsory reference to arbitration and the decree made thereon were illegal and void. *Held* further, that the decree itself was bad on the ground that it was not one coming within the scope of s. 14 of the Act. PROTAP CHANDRA MISSER *v.* BROJONATH MISSER.

[I. L. R. 19 Calc. 275

ACT, 1863—XX, s. 18.

See APPEAL—DECREES.

[I. L. R. 18 Calc. 382

[I. L. R. 19 Calc. 275

See ENDOWMENT.

[I. L. R. 14 Mad. 1

——, 1864—VI.

See CASES UNDER WHIPPING.

——, 1864 XX.

See HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION.

[I. L. R. 17 Bom. 271.

See MINORS—BOMBAY MINORS ACT (XX OF 1864).

——, 1865—III.

See CARRIERS.

[I. L. R. 17 Calc. 39

——, 1865—X.

See SUCCESSION ACT.

——, 1865—XI. s. 6.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CROPS.

[I. L. R. 21 Calc. 430

——, 1865—XV.

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.

[I. L. R. 16 Bom. 136

——, 1865—XV.

See PARSIS.

[I. L. R. 17 Bom. 146

——, 1866—XIV.

See POST OFFICE ACT, 1866.

——, 1866—XXI.

See NATIVE CONVERTS MARRIAGE DISSOLUTION ACT.

——, 1867—XXV.

See COPYRIGHT.

[I. L. R. 14 Bom. 586

——, ——, s. 3.

See NEWSPAPER.

[I. L. R. 16 Mad. 443

——, 1868—I.

See GENERAL CLAUSES CONSOLIDATION ACT.

——, 1868—XIV.

See OUDE RENT ACT.

——, 1869—I.

See OUDE ESTATES ACT.

ACT, 1869—IV.
See DIVORCE ACT.

——, 1869—XIV.
See BOMBAY CIVIL COURTS ACT.

——, 1870—VII.
See COURT-FEES ACT.

——, 1870—X.
See LAND ACQUISITION ACT, 1870.

——, 1870—XXI.
See HINDU WILLS ACT.

——, 1871—IV.
See CORONERS ACT.

——, 1871—VI.
See BENGAL CIVIL COURTS ACT, 1871.

——, 1871—XXIII.
See PENSIONS ACT, 1871.

——, 1872—III, s. 10.
See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM AND FORFEITURE OF INHERITANCE
[I. L. R. 19 Calc. 289

——, 1872—IX.
See CONTRACT ACT.

——, 1872—XV.
See MARRIAGE ACT, 1872.

——, 1873—X.
See OATHS ACT.

——, 1873—XIX.
See N.-W. P. LAND REVENUE ACT.

——, 1874—II.
See ADMINISTRATOR-GENERALS ACT.

——, 1874—XIV.
See SCHEDULED DISTRICTS ACT.

——, 1874—XV.
See LAWS LOCAL EXTENT ACT.

——, 1875—IX.
See MAJORITY ACT.

——, 1876—V.
See REFORMATORY SCHOOLS ACT.

——, 1876—VI.
See CHOTA NAGPORE ENCUMBERED ESTATES ACT.

——, 1876—X.
See BOMBAY REVENUE JURISDICTION ACT.

ACT, 1876—XVIII.
See OUDE LAWS ACT.

——, 1877—I.
See SPECIFIC RELIEF ACT.

——, 1877—III.
See REGISTRATION ACT, 1877.

——, 1877—XV.
See LIMITATION ACT, 1877.

——, 1878—I.
See OPIUM ACT, 1878.

——, 1878—VII.
See FOREST ACT, 1878.

——, 1878—XI.
See ARMS ACT.

——, 1879—I.
See STAMP ACT, 1879.

——, 1879—IV.
See RAILWAY ACT, 1879.

——, 1879—XVII.
See DEKHAN AGRICULTURISTS RELIEF ACT, 1879.

——, 1879—XVIII.
See LEGAL PRACTITIONERS ACT.

——, 1880—III.
See CANTONMENTS ACT, 1880.

——, 1880—IV.
See PORTUGUESE CONVENTION ACT, 1880.

——, 1881—V.
See PROBATE AND ADMINISTRATION ACT.

——, 1881—XXI.
See BROACH AND KAIRA ENCUMBERED ESTATES ACT.

——, 1881—XXIII.
See DEKHAN AGRICULTURISTS RELIEF ACT, 1879, s. 56.
[I. L. R. 14 Bom. 516

——, 1881—XXVI.
See NEGOTIABLE INSTRUMENTS ACT.

——, 1882—V.
See EASEMENTS ACT.

——, 1882—VI.
See COMPANIES ACT.

——, 1882—X.
See CRIMINAL PROCEDURE CODE, 1882.

ACT, 1882—XIV.

See CIVIL PROCEDURE CODE, 1882.

——, 1882—XV.

See PRESIDENCY-TOWNS SMALL CAUSE COURT ACT.

——, 1882—XX.

See PAPER CURRENCY ACT.

——, 1882—XXII, s. 6.

See DEKHAN AGRICULTURISTS RELIEF ACT, 1879, s. 15D.

[I. L. R. 16 Bom. 351

——, 1884—V.

See CHOTA NAGPORE ENCUMBERED ESTATES ACT, 1884.

——, 1885—III.

See TRANSFER OF PROPERTY ACT AMENDMENT ACT.

——, 1885—VIII.

See BENGAL TENANCY ACT.

——, 1886—IX.

See DEO ESTATES ACT.

——, 1886—XIV.

See N.-W. P. RENT ACT AMENDMENT ACT.

——, 1887—I.

See GENERAL CLAUSES CONSOLIDATION ACT.

——, 1887—VII.

See SUITS VALUATION ACT.

——, 1887—IX.

See PROVINCIAL SMALL CAUSE COURTS ACT.

——, 1887—XII.

See BENGAL, N.-W. PROVINCES AND ASSAM CIVIL COURTS ACT.

——, 1888—VI, s. 5.

See SECURITY FOR COSTS—SUITS.

[I. L. R 17 Calc. 610

——, 1888—VII.

See CIVIL PROCEDURE CODE AMENDMENT ACT (VII OF 1888).

——, s. 2.

See CLAIM TO ATTACHED PROPERTY.

[I. L. R. 18 Calc. 296

See DISTRICT JUDGE, JURISDICTION OF.

[I. L. R. 18 Calc. 496

——, 1889—VII.

See SUCCESSION CERTIFICATE ACT.

ACT, 1889—XI.

See BURMA COURTS ACT, 1889.

——, 1889—XIII.

See CANTONMENTS ACT, 1889.

——, 1890—VIII.

See GUARDIANS AND WARDS ACT.

——, 1890—IX.

See RAILWAY ACT, 1890.

——, 1891—IV.

See CRIMINAL PROCEDURE CODE AMENDMENT ACT.

——, 1891—VIII.

See PRESCRIPTION—EASEMENTS—RIGHT OF WAY.

[I. L. R. 14 All. 185

ACT, CONSTRUCTION OF—

See STATUTES, CONSTRUCTION OF—

ACT OF GOD.

See CARRIERS.

[I. L. R. 18 Calc. 427

ACT OF STATE.

See GRANT—RESUMPTION OR REVOCATION OF GRANT.

[I. L. R. 14 Mad. 431

ACT OF FOREIGN POWER.

See HINDU LAW—ENDOWMENT—DISMISSAL OF MANAGER.

[I. L. R. 17 Bom. 600, 620 note

ACTIONABLE CLAIM.

See CASES UNDER TRANSFER OF PROPERTY ACT, s. 135.

ADDRESS, SUFFICIENCY OF.

See MADRAS MUNICIPAL ACT, 1884, s. 433.

[I. L. R. 14 Mad. 386

ADJOURNMENT OF CASE, GROUND FOR.

See PENSIONS ACT, s. 4.

[I. L. R. 17 Bom. 169

See WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES.

[I. L R. 20 Calc. 740

ADMIRALTY OR VICE-ADMIRALTY JURISDICTION.

See COSTS—SPECIAL CASES—ADMIRALTY OR VICE-ADMIRALTY.

[I. L. R. 17 Calc. 84

See LETTERS PATENT HIGH COURT, CL. 15.

[I. L. R. 17 Calc. 66

ADMINISTRATION.

See CERTIFICATE OF ADMINISTRATION.

See LETTERS OF ADMINISTRATION.

——, Suit for—

See MAHOMEDAN LAW—DEBTS.

[I. L. R. 21 Calc. 311

ADMINISTRATOR, RIGHTS OF—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[I. L. R. 17 Bom. 197

ADMINISTRATOR.

1.—*Sale by administrator not so described—Administrators who are also heirs—Purchaser, title and rights of.*] Certain persons who were heirs of a deceased lady, and had also taken out administration to her estate, limited to certain Government securities, sold such Government securities to a *bonâ fide* purchaser under a written instrument, in which the vendors were not described as administrators:—*Held* that the failure to so describe themselves did not affect the sale, inasmuch as they were entitled to sell either as heirs or administrators; and although as heirs they could sell no more than their own shares in such securities, yet the entire purchase-money having come to their hands, they, as administrators, were bound to administer the same as part of the assets of the estate, the question whether they did so or not, not being one which would affect the title of the purchaser. *West of England and South Wales District Bank* v. *Murch*, L. R. 23 Ch. D., 138, and *Corser* v. *Cartwright*, L. R. 7 H. L., 731, followed in principle. PREONATH KARAR *v.* SURJA COOMAR GOSWAMI

[I. L. R. 19 Calc. 26

2.—*Liability of administrator for loss to estate—Compromise of claim by administrator—Subsequent suit by a creditor of estate to set aside the compromise and for damages for negligence of administrator—Succession Act (X of 1865), ss. 280 and 328—Administrator's liability for neglect to get in any part of the deceased's property.*] One *P* mortgaged certain property to *H* for Rs. 2,667. *H* sued *P* to recover the mortgage-debt. Pending the suit *P* died in 1878. Thereupon *A*, the son of *P*, took out letters of administration to the deceased's estate and contested *H's* claim. *H* obtained a decree in the Court of First Instance for the sale of the mortgaged property, and in execution of this decree the property was sold for Rs. 810 and purchased by *H*. The decree was afterwards—*viz.*, on 2nd August 1883—reversed, on appeal, by the Assistant Judge. Thereupon *H* entered into a compromise with *A* by which it was arranged that *A* should give up his claim under the appellate decree of the Assistant Judge, to be repaid by *H* the sum of Rs. 810 which he had realized by sale of the mortgaged property, and that *H* should pay to *A* Rs. 240 on account of his costs incurred in the suit and in taking out letters of administration. This compromise was effected on 16th

ADMINISTRATOR—*concluded.*

November 1883. In the meantime on 14th September 1883, the plaintiff had purchased from one *B* an old decree which was outstanding against the estate of the deceased *P*. On 10th September 1883, the plaintiff sought to execute this decree against the mortgaged property. Having failed in this attempt, the plaintiff filed a suit against *A* for a declaration that the compromise of the 16th November 1883, had been fraudulently effected with the object of defeating his (the plaintiff's) claim, and to recover Rs. 1,000 as damages from the defendant on account of his fraudulent and negligent conduct as administrator of his deceased father's estate. This suit was dismissed by both the lower Courts, on the ground that as there were other creditors who had claims against the estate, the plaintiff's proper remedy was an administration suit, which would enable the Court to assess the claims of all the creditors:—*Held* (reversing the lower Court's decree) that the plaintiff was entitled to recover. By the compromise of the 16th November 1883, the defendant had given up his right under the Appellate Court's decree of the 2nd August 1883 to be repaid by *H* the sum of Rs. 810 and had thereby occasioned a loss to the estate of that amount. He was, therefore, liable to the plaintiff to make good the amount under s. 328 of the Succession Act (X of 1865), subject, however, to a deduction, under s. 280 of that Act, of the expenses incurred by him in obtaining letters of administration, and the costs of any judicial proceeding that might be necessary for administering the estate. KHUBRUBHAI NASARVANJI *v.* HORMAJSHA PHIROZSHA.

[I. L. R. 17 Bom. 637

ADMINISTRATOR-GENERAL, PETITION BY—

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION.

[I. L. R. 20 Calc. 879

ADMINISTRATOR-GENERALS ACT (II OF 1874), ss. 12, 16 & 17.

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION.

[I. L. R. 20 Calc. 879

ADMISSION.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 14 Bom. 312

[I L. R. 15 All. 189.

See EVIDENCE ACT, s. 11.

[I. L R. 16 Bom. 125

——, In pleadings.

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

[I. L. R. 14 Bom. 78

ADMISSION—Of rent due.

See BENGAL TENANCY ACT, s. 150.

[I. L. R. 20 Calc. 595

1.—*Admission in a mortgage as to amount of land excepted from its operation.*] *Debutter* land within the limits of a revenue-paying *mouzah*, which had been mortgaged by the defendants to a predecessor in title of the plaintiff, was exempted from the mortgage, the deed specifying the number of *bighas* making the area of the *debutter*. Against a plaintiff, who made title to the mortgaged *mouzah* and claimed possession of all of it that had passed by the mortgage, the mortgagors set up that there was more *debutter* in the *mouzah* than the deed had specified, the intention of the parties to the deed having been to exempt whatever *debutter* there actually was:—*Held*, that the statement in the deed as to the quantity of the *debutter* was a deliberate admission, imposing upon the mortgagors who had made it, the burden of proving that it was untrue, or that they were not bound by it; also that the Subordinate Judge's finding that the defendants had not given proof sufficient to discharge themselves of this, was correct. JARAO KUMARI *v.* LALONMONI.

[I. L. R. 18 Calc. 224
[L. R. 17 I. A. 145

2.—*Admission in written statement—Validity of deed, Proof of—Onus probandi.*] The plaintiff purchased a house from the defendant under a deed of sale dated 23rd June 1886. In a suit to recover possession of the house, the defendant pleaded that the sale-deed was invalid for want of consideration:—*Held*, that the mere admission in the defendant's written statement of the execution of the sale-deed did not dispense with the necessity of establishing affirmatively the validity of the deed, which was expressly impugned by the defendant. JAVANMAL JITMAL *v.* MUKTABAI.

[I. L. R. 14 Bom. 516

ADOPTION.

See CASES UNDER HINDU LAW—ADOPTION.

See CASES UNDER HINDU LAW—CUSTOM—ADOPTION.

See HINDU LAW—WILL—CONSTRUCTION.

[I. L. R. 19 Calc. 452

See MALABAR LAW—ADOPTION.

[I. L. R. 15 Mad. 6

See MALABAR LAW—CUSTOM.

[I. L. R. 13 Mad. 209.

——, Power of, Expiry of—

See HINDU LAW—WILL—CONSTRUCTION.

[I. L. R. 17 Calc. 122

——, Proof of—

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 14 Bom. 312

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[I. L. R. 16 Bom. 249

(1) ACTS.

1.—*Bengal Tenancy Acts (VIII of* 1885), *s.* 84—*Order of Civil Court under.*] There is no appeal from an order passed by a Civil Court under s. 84 of the Bengal Tenancy Act. GOGHUN MOLLAH *v.* RAMESHUR NARAIN MAHTA.

[I. L. R. 18 Calc. 271

2.—*Bengal Tenancy Act (VIII of* 1885), *s.* 84—*Civil Procedure Code (Act XIV of* 1882), *ss.* 2, 588.] An order made by a Civil Court under s. 84 of the Bengal Tenancy Act is not appealable, not being a decree within the meaning of s. 2 of the Code of Civil Procedure, and no appeal being allowed by s. 588 of the Code or by any special provision of the Bengal Tenancy Act. *Goghun Mollah* v. *Rameshur Narain Mahta*, I L. R 18 Calc., 271, referred to and followed. PEARI MOHUN MUKERJI *v.* BARODA CHURN CHUCKERBUTTI.

[I. L. R. 19 Calc. 485

APPEAL—*continued.*

(1) ACTS—*continued.*

3.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 104, *cl.* 2—*Special Judge—Dispute as to settlement of rent.*] No appeal lies to the High Court from the decision of a Special Judge under s. 104, cl. 2, of the Bengal Tenancy Act. LALA KIRUT NARAIN *v.* PALUKDHARI PANDEY.

[I. L. R. 17 Calc. 326

4.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 153—*Appeal from decree in rent-suit under Rs.* 100.] The words "amount of rent annually payable by a tenant" in s. 153 (*a*) of the Bengal Tenancy Act include the case of rent payable by a tenant to one of his co-sharer landlords who collects his share of the rent separately. An appeal to the High Court therefore lies in such a case notwithstanding the amount claimed is less than Rs. 100. NABAIN MAHTON *v.* MANOFI PATTUK.

[I. L. R. 17 Calc. 489

5.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 153—*Cesses. Suit for—Road Cess Act—Bengal Act* (*IX of* 1880), *s.* 47—*Appeal in cases under Rs.* 100—*Meaning of 'rent.'*] Although the Bengal Tenancy Act declares that in ss. 53 to 68 and in ss. 72 to 75, "rent" includes cesses, yet these are enabling provisions, passed to extend the meaning of "rent," and it in no way interferes with the law refusing a right of appeal in suits below Rs. 100 in value, which law is made applicable to suits for cesses by s. 47 of Bengal Act (IX of 1880). RAJANI KANT NAG *v.* JAGESHWAR SINGH.

[I. L. R. 20 Calc. 254

6.—*Bengal Tenancy Act, s.* 153—*Suit for arrears of rent—Dâk cess when considered as rent—Appeal where subject-matter under value of Rs.* 100.] Where *dâk* cess is claimed under the contract by which the rent is payable, it must be regarded as rent, *i.e.*, as part of what is lawfully payable in money for use and occupation of the land held by the tenant, and where there is a dispute with regard to such *dâk* cess, the amount of rent is in dispute, and an appeal lies though the amount in dispute is less than Rs. 100, and notwithstanding the provisions of s. 153 of the Bengal Tenancy Act. WATSON & CO. *v.* SREEKRISTO BHUMICK.

[I. L. R. 21 Calc. 132

7.—*Court-Fees Act, s.* 12—*Appeal against an order for payment of additional Court-fees.*] In a suit in a Subordinate Court by members of a Malabar *tarwad* to set aside an instrument affecting the whole of the *tarwad* property, the Subordinate Judge held that Court-fees were leviable, assessed on the value of the property, and accordingly ordered an additional payment to be paid by the plaintiffs, and on their failure to make the payment, dismissed the suit:—*Held*, that an appeal lay from the order for payment of the additional Court-fees, and the High Court was not precluded by the Court-Fees Act, s. 12, from revising it, and reversing the decree. KANARAN *v.* KOMAPPAN.

[I. L. R. 14 Mad. 169

APPEAL—*continued.*

(1) ACTS—*concluded.*

8.—*Guardians and Wards Act* (*VIII of* 1890), *s.* 47—*Removal of guardian—Order refusing to remove a guardian.*] No appeal lies under the Guardians and Wards Act (VIII of 1890) from an order of a District Judge refusing to remove a guardian. MOHIMA CHUNDER BISWAS *v.* TARINI SUNKER GHOSE.

[I. L. R. 19 Calc. 487

9.—*Land Acquisition Act* (*X of* 1870), *s.* 15—*District Judge's order on reference by the Collector—Questions of conflicting claims to title—Persons claiming interest in the compensation—"Apportionment," construction of the term.*] A Collector having acquired land under the provisions of the Land Acquisition Act (X of 1870), and a question having arisen as to the right to the compensation—each of two rival claimants claiming exclusive title to the whole of the compensation awarded—the Collector referred the question to the decision of the District Judge under s. 15 of the Act. The District Judge having decided the question in favour of one of the claimants, the other appealed to the High Court. In appeal, it was contended that as the provisions of the Land Acquisition Act apply to cases in which there was a dispute as to the apportionment of compensation, and not to cases in which there was no question as to apportionment, and in which each of the claimants laid claim to the entire amount of the compensation, the order passed by the District Judge was not appealable under the provisions of the Act, as there was no question of apportionment to be determined:—*Held*, that looking to the language of s. 15 of the Land Acquisition Act (X of 1870), which clearly contemplates the reference of such a dispute being provided for in the subsequent part of the Act, and as there is no other provision in the Act made for it, the term "apportionment" in Part IV should be given a liberal construction, as including the case where the Court has to decide between rival claimants to the entire compensation. The order of the District Judge was therefore appealable. KASHIM *v.* AMINBI.

[I. L. R. 16 Bom. 525.

(2) ARBITRATION.

10.—*Award, decree in accordance with—Civil Procedure Code, s.* 522.] After issues had been framed in a suit to wind up a partnership, the matter was referred to an arbitrator, who made his award, and with regard to certain property, not part of the partnership property, he referred the parties to a separate suit. A decree was passed in accordance with the award:—*Held*, that an appeal lay against the decree passed on the award, on the ground that the award was not legal; but that the award was not illegal by reason of its comprising the reference of the parties to a separate suit. VENKAYYA *v.* VENKATAPPAYYA.

[I. L. R. 15 Mad. 348

APPEAL—*continued.*

(2) ARBITRATION—*concluded.*

11.—*Award, decree in accordance with—Civil Procedure Code, ss.* 522, 525.] When an award has been filed in Court, as provided by s. 525 of the Code of Civil Procedure, the judgment and decree based thereon must be drawn up specifically in terms of the award. If the decree merely decrees in general terms the claim of one party or of the other, it cannot be said that such decree is in accordance with the award, and being "not in accordance with the award" an appeal will lie therefrom. UMMI FAZL *v.* RAHIM-UN-NISSA.

[I. L. R. 13 All. 366

12.—*Award, decree in accordance with—Illegal award.*] Where a decree has been passed in terms of an award, an appeal lies only where the question is whether the award was illegal, being void *ab initio*. NANDRAM DALURAM *v.* NEMCHAND JADAVCHAND.

[I. L. R. 17 Bom. 357

(3) CERTIFICATE OF ADMINISTRATION.

13.—*Order of District Judge as to security—Insufficiency of security—Succession Act* (*X of* 1865) *s.* 263—*Act XXVII of* 1860, *s.* 6.] No appeal lies against an order made whether in pursuance of the directions of the High Court or otherwise, by a District Judge as to security for the grant of a certificate of administration, on the ground that such security is insufficient. *Mon-Mohinee Dassee* v. *Khetter Gopal Dey*, I. L. R. 1 Calc., 127, referred to. LUCAS *v.* LUCAS.

[I. L. R. 20 Calc. 245

14.—*Succession Certificate Act, ss.* 9 *and* 19—*Order granting certificate conditional on the filing of security.*] Where on an application for a certificate of succession under the Succession Certificate Act (Act VII of 1889) an order was made granting the certificate conditionally on the applicant's furnishing security:—*Held* that this was not an order "granting, refusing or revoking a certificate" within the meaning of s. 19 of the Act, and that, therefore, no appeal would lie therefrom. BHAGWANI *v.* MANNI LAL.

[I. L. R. 13 All. 214

15.—*Order to person holding certificate under Act XXVII of* 1860 *to furnish security where portion of the property held as security has been sold—Succession Certificate Act* (*VII of* 1889).] An order by which a person who had obtained a certificate under Act XXVII of 1860 was directed to furnish security to the extent to which the security originally furnished had been diminished by the sale of a portion of the property, is not an order from which an appeal lies either under Act XXVII of 1860 or Act VII of 1889. ALTA SOONDARI DASI *v.* SRINATH SAHA.

[I. L. R. 20 Calc. 641

APPEAL—*continued.*

(4) COSTS.

16.—*Appeal as to costs—Alteration of lower Court's costs on appeal.*] On an appeal by the defendant, on, among other matters, costs, the Appeal Court held that, even on the findings of the lower Court, the order as to costs should be materially altered in favour of the defendant. SUDDASOOK KOOTARY *v.* RAM CHUNDER.

[I. L. R. 17 Calc. 620

17.—*Appeal as to costs—District Judge, jurisdiction of—Procedure.*] The plaintiff sued for possession of certain land in the Court of a Subordinate Judge of the Second Class. The Subordinate Judge returned the plaint for want of jurisdiction, and ordered the plaintiff to pay a separate set of costs to each of the defendants. The plaintiff appealed to the District Judge on the grounds first, that the Subordinate Judge had jurisdiction to entertain the plaint; and secondly, that the order as to costs was improper. At the hearing of the appeal the plaintiff's pleader abandoned the point of jurisdiction. Thereupon the District Judge held that the appeal would not lie simply on the question of costs. He therefore confirmed the Subordinate Judge's order:—*Held* that the District Judge had jurisdiction to hear the appeal on the question of costs. VASUDEV RAMCHANDRA *v.* BHAVAN JIVRAJ.

[I. L. R. 16 Bom. 241

18.—*Appeal as to costs—Civil Procedure Code* (*XIV of* 1882), *ss.* 220, 540 *and* 568—*Error of lower Court under misapprehension of fact and law.*] Where the original Court has made an erroneous order for costs under a misapprehension of fact and law, an appeal lies from such order under the Civil Procedure Code, although the appellant complains of nothing else but the order for costs so erroneously made. RANCHORDAS VITHALDAS *v.* BAI KASI.

]I L. R. 16 Bom. 676

19.—*Party improperly brought on the record as representative of deceased Judgment-debtor—Civil Procedure Code, ss.* 2, 244, *cl.* (*c*), 540.] One *B D* was made a party to an application for execution of a decree as one of the representatives of a deceased judgment-debtor. It had been decided in a previous suit that *B D* was not related to the judgment-debtor in such a manner that he could become his legal representative, and in this proceeding also he objected that he was not such representative, and his objection was allowed, and the order allowing it remained unappealed and became final. The Court, however, while allowing the objection, did not give the objector his costs:—*Held* that the objector did not, by being improperly brought into the execution-proceedings, lose his right of appeal and further, that he could, under the circumstances, appeal on the question of costs alone. BISHEN DAYAL *v.* BANK OF UPPER INDIA.

[I. L. R. 13 All. 290

APPEAL—*continued.*

(4) COSTS—*concluded.*

20.—*Exercise of discretion of Court as to apportionment of costs.*] An appeal as to costs will lie from an appellate decree when the Court has exercised its discretion as to costs arbitrarily, and not according to general principles. *Khooda Buksh* v. *Elahee Buksh*, 1 S. D. A., N. W., (1861), p. 235, and *Assa Ram* v. *Kashmeere Dass*, Agra F. B., 90, followed. DAULAT RAM *v.* DURGA PRASAD.

[I. L. R. 15 All. 333

(5) DECREES.

21.—*Order permitting withdrawal of suit—Civil Procedure Code (Act XIV of* 1882), *ss.* 2, 373 *and* 588.] An order made by an Appellate Court under s. 373 of the Civil Procedure Code, giving permission to withdraw a suit with liberty to bring a fresh one, is not a decree within the meaning of s. 2, and is not appealable. *Ganga Ram* v. *Data Ram*, I. L. R. 8 All. 82, dissented from. *Kalian Singh* v. *Lekhraj Singh*, I. L. R. 6 All. 211, approved of. JOGODINDRO NATH *v.* SARUT SUNDURI DEBI.

[I. L. R. 18 Calc. 322

DICK *v.* DICK.

[I. L. R. 15 All. 169

22.—*Act XX of* 1863, *s.* 18—*Order refusing leave to sue—Decree—Civil Procedure Code*, 1882, *s.* 2.] An order refusing leave to institute a suit under s. 18 of Act XX of 1863 is not a "decree" within the meaning of s. 2 of the Civil Procedure Code, and is not appealable. KAZEM ALI *v.* AZEM ALI KHAN.

[I. L. R. 18 Calc. 382

23.—*Civil Procedure Code (Act XIV of* 1882), *s.* 2—*Order deciding point of law arising incidentally—Decree.*] An order merely determining a point of law arising incidentally or otherwise in the course of a proceeding for determining the rights of parties seeking relief is not a decree within the meaning of s. 2 of the Civil Procedure Code, and is not appealable. Where the judgment-creditor after satisfaction entered upon a compromise, applied for execution, on the ground of the compromise having been obtained from him by fraud, and the Court below, being of opinion that the remedy of the judgment-creditor was by a proceeding in execution, and not by a regular suit, ordered the case to be tried on its merits:—*Held*, that no appeal lay from such an order. BEHARY LAL PUNDIT *v.* KEDAR NATH MULLICK.

[I. L. R. 18 Calc. 469

24.—*Order under s.* 18 *of Act XX of* 1863 *granting leave to institute a suit—Bengal N.-W.P. and Assam Civil Courts Act (XII of* 1887) *s.* 20.] An order passed under s. 18 of Act XX of 1863 granting leave to institute a suit, is not a "decree" under the Civil Procedure Code, and is not an appealable order. In a suit to have the

APPEAL—*continued.*

(5) DECREES—*continued.*

defendants removed from the office of *shebaits* of an endowment, in which suit leave to institute it had been obtained under s. 18 of the Act, it was contended that, having regard to the provisions of s. 20 of Act XII of 1887, an appeal to the High Court lay from that order:—*Held*, that s 20 of Act XII of 1887 was intended only to define the Court to which an appeal lies from a decree or order of a District Judge, and was not intended to define the right of appeal or the class of decrees or orders from which appeals shall lie, and that no appeal lay from the order passed under s. 18 of Act XX of 1863 granting the plaintiffs leave to institute the suit. PROTAP CHANDRA MISSER *v.* BROJONATH MISSER

[I. L. R. 19 Calc. 275

25.—*Order declaring the rights of parties to a partition in certain specific shares—Civil Procedure Code (Act XIV of* 1882), *ss.* 2, 396—*Partition suit.*] *Held* by the FULL BENCH (PRINSEP, J., doubting) :—That an order in a suit for partition, which declares the specific rights of the parties and the property to be partitioned, decides that the suit must be decreed, as after such an order the suit could not be dismissed by the Court by which it was made, and is therefore an order which adjudicates upon the rights claimed and the defence set up in the suit, and which, as far as the Court expressing it is concerned, decides the suit within the definition of a decree in s. 2 of the Civil Procedure Code, and is therefore appealable as a decree. DULHIN GOLAB KOER *v.* RADHA DULARI KOER.

[I. L. R. 19 Calc. 463

26.—*Civil Procedure Code*, 1882, *s.* 2—*Rent Recovery Act (Madras Act VIII of* 1865) *s.* 27 *Order under—Decree.*] An order made under the Madras Rent Recovery Act, s. 27, is not a decree within the meaning of the Civil Procedure Code, s. 2. PERUMAL *v.* RAJAGOPALA.

[I. L. R. 13 Mad. 248

27.—*Civil Procedure Code, ss.* 2, 258, 588—*Order dismissing application to certify adjustment of decree.*] *Semble*—An appeal lies against an order dismissing an application made under the Civil Procedure Code, s. 258, that the adjustment of a decree be recorded as certified, such order being a decree within the meaning of s. 2 of the Code. LINGAYYA *v.* NARASIMHA.

[I. L. R. 14 Mad. 99

28.—*Order absolute for foreclosure—Transfer of Property Act (IV of* 1882) *s* 87—*Execution of decree—Practice—Civil Procedure Code, ss.* 2, 244.] The order mentioned in s. 87 of the Transfer of Property Act (IV of 1882) is an order in execution of the substantive foreclosure decree, and is appealable as a decree under s. 244 read with s. 2 of the Civil Procedure Code upon the stamp payable in respect of such orders. So *held* by the Full Bench, EDGE, C. J., doubting. Where an

APPEAL—*continued.*

(5) DECREES—*concluded.*

appeal has been erroneously presented to the High Court as a first appeal from an order the Court will not convert it into a first appeal from a decree under s. 244 read with s. 2 of the Civil Procedure Code. KEDAR NATH *v.* LALJI SAHAI.

[I. L. R. 12 All. 61

As to latter portion, *See* SANT LAL *v.* SRIKISHEN.

[I. L. R. 14 All. 231

29.—*Civil Procedure Code, s. 2—Decree, definition of.*] An order of a District Judge returning a memorandum of appeal to be presented in the proper Court on the ground that the value of the suit is beyond the pecuniary limits of his jurisdiction is not a decree within the meaning of s. 2 of the Civil Procedure Code. MAHABIR SINGH *v.* BEHARI LAL.

[I. L. R. 13 All. 320

30.—*Order dismissing application for participation in assets—Civil Procedure Code, ss. 2, 244, 295.*] No appeal will lie from an order under s. 295 of the Code of Civil Procedure dismissing, on the ground that the decree was barred by limitation, a decree-holder's application to share in the assets realised under another decree against the same judgment-debtor. Such an order cannot be regarded as a decree under s. 244 read with s. 2 of the said Code. KASHI RAM *v.* MANI RAM.

[I. L. R. 14 All. 210

31.—*Transfer of Property Act, s. 87, order under—Civil Procedure Code, ss. 2, 244 and 622—Superintendence of High Court.*] An order under s. 87 of Act IV of 1882 extending the time for payment of the mortgage-money by a mortgagor is a decree within the meaning of ss. 2 and 244 of the Code of Civil Procedure, 1882, and an appeal will lie from it. An application will therefore not lie under s. 622 of that Code for revision of such order. RAHIMA *v.* NEPAL RAI.

[I. L. R. 14 All. 420

32.—*Civil Procedure Code, ss. 2, 582—Order rejecting an appeal.*] An intending appellant executed in favour of two vakils a vakalatnama; it was accepted only by one of the vakils, and he presented the appeal. The appeal was placed on the file by the District Judge, but on its coming on for disposal before the Subordinate Judge, he held that it had not been duly presented and made an order rejecting it:—*Held*, that an appeal lay against the above-mentioned order as being a decree within the meaning of s. 2 of the Code of Civil Procedure. AYYANNA *v.* NAGABHOOSHANAM.

[I. L. R. 16 Mad. 285

(6) DEFAULT IN APPEARANCE.

33.—*Dismissal of an appeal for default—Pleader unprepared to proceed with a case—Civil Procedure Code (Act XIV of 1882), ss. 2 and 556—"Decree."*] On the day fixed for the hearing of

APPEAL—*continued.*

(6) DEFAULT IN APPEARANCE—*concluded.*

an appeal in the lower Appellate Court the appellant appeared by a duly appointed pleader. The pleader applied to the Court for an adjournment, on the ground that he had not time to fully prepare himself in the case. The Court refused to grant any adjournment, and dismissed the appeal for default:—*Held*, that the order of dismissal was bad. The mere fact that the appellant's pleader was not prepared to proceed with the case would not enable the Court to deal with the case as if there was no appearance at all for the appellant, and to dismiss the appeal for default. *Per* BIRDWOOD, J.—An order dismissing an appeal for default is one falling within the definition of a "decree" contained in s. 2 of the Code of Civil Procedure (Act XIV of 1882), and is, therefore, appealable. RAMCHANDRA PANDURANG NAIK *v.* MADHAV PURUSHOTTAM NAIK.

[I. L. R. 16 Bom. 23

34.—*Dismissal of appeal for default—"Order"—"Decree"—Civil Procedure Code, s. 2, and ss. 556, 558.*] No appeal will lie under s. 10 of the Letters Patent from the order of a single Judge of the High Court dismissing an appeal for default. The decision of a Court dismissing a suit or an appeal for default is an "order" and not a "decree." *Nand Ram* v. *Muhammad Bakhsh*, I. L. R. 2 All. 616; *Mukhi* v. *Fakir*, I. L. R. 3 All. 382; *Dhan Singh* v. *Basant Singh*, I. L. R. 8 All. 519; *Chand Kour* v. *Partab Singh*, I. L. R. 16 Calc. 98; *Muhammad Naim-ullah Khan* v. *Ishan-ullah Khan*, I. L. R. 14 All. 226, cited. *Ram Chandra Pandurang Naik* v. *Madhav Purushottam Naik*, I. L. R. 16 Bom. 23, not followed. MANSAB ALI *v.* NIHAL CHAND.

[I. L. R. 15 All. 359

(7) EXECUTION OF DECREE.

(*a*) QUESTIONS IN EXECUTION.

35.—*Separate suit—Claim by legal representative to property as his own independently of deceased judgment-debtor—Jus tertii—Civil Procedure Code, ss. 234, 244, 278 and 283.*] *Held*, by the Full Bench (TYRRELL, J., dissenting): Where a judgment-debtor dies after the passing of the decree, and his legal representatives are brought on the record in execution-proceedings to represent him in respect of the decree, questions which they raise as to property which they say does not belong to his assets in their hands, and as such is not capable of being taken in execution, are questions which under s. 244 (*c*) of the Civil Procedure Code must be determined in the execution department, and not by separate suit. There is no distinction in this respect between the positions of legal representatives added to the suit before, and those added after, the decree. Under the last paragraph of s. 234, the Court executing the decree may try and determine the question whether property in the legal representative's hands formed part of the deceased judgment-debtor's estate, and find this fact for the purpose of bringing the property to sale in execution, and giving the auction-purchaser a good

APPEAL—*continued.*

(7) EXECUTION OF DECREE—*continued.*

(*a*) QUESTIONS IN EXECUTION—*concluded.*

title under the sale; and the Court's order is subject to appeal but not to a separate suit under s. 283. SETH CHAND MAL *v.* DURGA DEI.

[I. L. R. 12 All. 313

(*b*) PARTIES TO SUITS.

38.—*Civil Procedure Code*, 1882, *ss.* 244 *and* 318.—*Petition by purchaser at Court-sale for possession.*] On an application made in 1888 under Civil Procedure Code, s. 318, by the purchaser at a Court-sale (who was the assignee of the decree which was being executed), praying for delivery of possession of the property purchased, it appeared that the sale took place in 1885, that it was confirmed in 1886, and that in January 1887 an order was made for delivery of possession to the purchaser. The judgment-debtor had resisted the purchaser's efforts to obtain possession in 1887 and set up in bar of the application in 1888 an oral agreement alleged to have been made between him and the purchaser. The application was rejected:—*Held*, that the question was one relating to the execution of the decree between the representative of the original decree-holder and one of the defendants to this suit, and fell within s. 244 of the Civil Procedure Code, and an appeal therefore lay against the order rejecting the application. MUTTIA *v.* APPASAMI.

[I. L. R. 13 Mad. 504

37.—*Civil Procedure Code, ss.* 244 *and* 308—*Order cancelling sale—Representative of decree-holder.*] One who had attached a decree and obtained leave to bid at the sale of land ordered to be sold in execution, and to have the purchase-money and the amount due under the decree set off against each other, became the purchaser for a sum less than the amount due under the decree. The Court made an order under Civil Procedure Code, s. 308, cancelling the sale and ordering a re-sale on the ground that the purchaser had not paid the full amount due on his purchase within the time limited:—*Held*, that the petitioner was the representative of the decree-holder within the meaning of Civil Procedure Code, s. 244, and an appeal by him lay against the order. SAH MAN MULL *v.* KANAGASABAPATHI.

[I. L. R. 16 Mad. 20

38.—*Appeal by some of the parties to a suit—Decree in appeal binding parties who were not parties to the appeal—Civil Procedure Code (Act XIV of* 1882), *s.* 244, *cl.* (*c*)—*Superintendence of High Court—Civil Procedure Code, s.* 622—*District Judge, jurisdiction of.*] The plaintiffs filed a suit in ejectment against *A*, *B* and *C*. The Subordinate Judge decreed the claim. On appeal, the District Judge rejected it. The plaintiff then preferred a second appeal to the High Court, which finally decided in plaintiffs' favour. To this second appeal *A* was not made a party. In execution of the High Court's decree,

APPEAL—*continued.*

(7) EXECUTION OF DECREE—*concluded.*

(*b*) PARTIES TO SUITS—*concluded.*

A was dispossessed, but was restored to possession by the Subordinate Judge under s. 332 of the Code of Civil Procedure. This order was reversed, on appeal, by the District Judge. *A* thereupon applied to the High Court, under s. 622 of the Code of Civil Procedure, to set aside the District Judge's order as *ultra vires*, on the ground that s. 244 of the Code was not applicable to the case, *A* not having been a party to the appeal in which the decree under execution was passed, and that, therefore no appeal lay to the District Judge from the Subordinate Judge's order:—*Held*, that *A* being a party to the suit, though not to the appeal in which the final decree was passed, the District Judge had jurisdiction to hear the appeal under s. 244, cl. (*c*) of the Code of Civil Procedure. GOWRI *v.* VIGNESHVAR.

[I. L. R. 17 Bom. 49

(8) NORTH-WESTERN PROVINCES ACTS.

39.—*N.-W. P. Rent Act* (*XII of* 1881), *s.* 189—*N.-W. P. Rent Act, Amendment Act* (*XIV of* 1886), *s.* 5—"*Rent payable by the tenant*"—*Rate of rent.*] The words "rent payable by the tenant" in s. 189 of the North-Western Provinces Rent Act (XII of 1881) (as amended by Act XIV of 1886) mean the rate of rent payable by the tenant, and not merely the actual amount of money which is due at any given time by the tenant to his landlord as rent. The appeal therefore given by that section is limited to cases in which the Court of First Instance has determined the rate of rent. RADHA PRASAD SINGH *v.* PERGASH RAI.

[I. L. R. 13 All. 193

40.—*N.-W. P. Rent Act* (*XII of* 1881), *s.* 189—*N.-W. P. Rent Act, Amendment Act* (*XIV of* 1886), *s.* 5—*Rent, rate of.*] Where a zamindar sued a tenant for rent of certain alluvial land, the amount claimed not being above Rs. 100, and the tenant objected that there was a custom in the village by which rent was paid in case of alluvial land only on the culturable portion, and that during some of the years in suit a less portion of the land than that for which rent was claimed had been culturable:—*Held*, that in such a suit the rate of rent was in dispute, and an appeal would therefore lie. *Radha Prasad Singh* v. *Pergash Rai*, I. L. R. 13 All. 193, followed; *Payag Sahu* v. *Matadin*, Weekly Notes, 1890, p. 229 overruled. RADHA PRASAD SINGH *v.* MATHURA CHAUBE.

[I. L. R. 14 All. 50

41.—*N.-W. P. Rent Act* (*XII of* 1881), *s.* 148—*Suit for rent where the right to receive it is disputed—Question of title—Jurisdiction of Civil and Revenue Courts—District Judge, jurisdiction of*]—*M* sued *I* and another for rent in the Court of the Collector. The defendants pleaded payment to *V*, who was accordingly brought on to the record as a co-defendant under s. 148 of the North-Western Provinces Rent Act (XII of 1881). The

APPEAL—*continued.*

(8) NORTH-WESTERN PROVINCES ACTS—*concluded.*

Collector decided in favour of *V.* The plaintiff appealed to the District Judge making all three persons respondents. The District Judge reversed the decision of the Collector, and ordered the whole costs to be paid by *V.* who thereupon appealed to the High Court:—*Held*, that the District Judge had no jurisdiction to entertain the appeal so far as the party brought in under s. 148 was concerned, and, that being so, had no power to award costs against him. ANAND RAM *v.* MAUSUMA BEGAM.

[I. L. R. 13 All. 364

42.—*N.-W. P. Land Revenue Act (XIX of 1873), ss. 113, 114—Order of Collector on application for partition—Decision on question of title.*] An appeal will lie from the "order" or "decision" of a Collector or Assistant Collector trying a question of title raised in the course of the hearing of an application for partition under the N.-W. P. Land Revenue Act (XIX of 1873). NIAZ BEGAM *v.* ABDUL KARIM KHAN.

[I. L. R. 14 All. 500

(9) ORDERS.

43.—*Order confirming appointment of head of muths—Nomination by a pandaram under a decree—Revocation of such nomination by the pandaram's successor.*] The *pandaram* of a *muth* being empowered under a decree to nominate a person to be the head of a subordinate *muth*, subject to the approval of the Subordinate Court, made a nomination and died before the Subordinate Court had come to a determination as to the fitness of his nominee. His successor in office was brought on to the record and revoked his nomination and made a fresh nomination. The Subordinate Court treated the fresh nomination as a nullity, and made an order confirming the first. The *pandaram* appealed against this order:—*Held* (1) that an appeal lay against the order complained of; (2) that the person, whose nomination had been confirmed, was a necessary party to the appeal. GNANASAMBANDA *v.* VISVALINGA.

[I. L. R. 13 Mad. 338

43.—*Order dismissing petition of insolvent debtor—Provincial Small Cause Courts Act (IX of 1887), s. 24—Insolvency petition in execution of decree in Small Cause suit—Civil Procedure Code, ss. 344, 588.*]—In proceedings in execution of the decree passed in a Small Cause suit by a District Munsif who had been invested with insolvency jurisdiction, the judgment-debtors filed a petition under s 344 of the Civil Procedure Code praying that they might be declared insolvents. Their petition was dismissed by the District Munsif:—*Held*, an appeal lay to the District Court against the order dismissing the petition. VAIKUNTA PRABHU *v.* MOIDIN SAHEB.

[I. L. R. 15 Mad. 89

APPEAL—*continued.*

(9) ORDERS—*continued.*

44.—*Civil Procedure Code, s. 610.—Order in execution of decree of Privy Council.*] Land was put up and purchased in execution of a decree, and the sale was confirmed, and the purchaser put into possession. On appeal against the order confirming the sale the High Court set the sale aside. The purchaser preferred an appeal to the Privy Council; pending which he had to give up possession of the land, but security was furnished under an order of the Court by persons not parties to the suit for its re-delivery to him and for payment of mesne profits in case of his appeal being successful. On appeal the Privy Council reversed the order of the High Court. The purchaser was accordingly replaced in possession of the land, and he applied for execution in respect of the mesne profits against the respondents in the Privy Council and the sureties. The Court of First Instance dismissed the application as against the sureties and limited the applicant's claim against the others to the net income of the land, less the cost of management, and allowed him no interest:—*Held*, the order must be taken to have been made under Civil Procedure Code, s. 610, and an appeal lay therefrom. ARUNACHELLAM *v.* ARUNACHELLAM.

[I. L. R. 15 Mad. 203

45.—*Order for pre-emption—Decree conditional on payment of price stated within a fixed period otherwise suit to stand dismissed—Non-payment of pre-emptive price—Appeal after expiration of period fixed by decree.*] The plaintiff in a pre-emption suit obtained a decree in his favour for pre-emption of the share in suit on payment of a fixed sum within a period specified in the decree, other wise his suit was to stand dismissed:—*Held*, that the plaintiff could appeal from such decree after the period prescribed therein had elapsed without his paying in the pre-emptive price fixed thereby, both as to the correctness of the pre-emptive price and as to the reasonableness of the time allowed for payment. KODAI SINGH *v.* JAISRI SINGH.

[I. L. R. 13 All. 189, 376

46.—*Civil Procedure Code, ss 328, 331—Obstruction to execution of decree—Dismissal of decree-holder's petition.*] Obstruction was offered to the execution of a decree for partition of certain property, by one claiming to be entitled to occupy part of the land in question as a *mulgeni* tenant. The decree-holder presented a petition to the Court under Civil Procedure Code, s. 328: this petition was rejected, and the claim was not numbered and registered as a suit:—*Held* that an appeal lay against the order rejecting the petition. GOPALA *v.* FERNANDES.

[I. L. R. 16 Mad. 127

47.—*Order rejecting plaint as insufficiently stamped.*] *A* sued *B* and *C* (1) for a declaration of his title to certain property, and (2) for an injunction restraining *C* from paying, and *B* from receiving, an allowance of Rs. 2,400 a year

APPEAL—*continued.*

(9) ORDERS—*concluded.*

out of the income of the property in dispute. *A* valued each of the reliefs sought at Rs. 130, and affixed a Court-fee stamp of Rs. 20 to the plaint. The Court of First Instance rejected the plaint as insufficiently stamped, holding that the claim for the injunction sought should be valued at ten times the annual allowance paid by *C* to *B* as provided by s. 7, cl. 2 of Act VII of 1870. On appeal to the High Court, *held*, that the order rejecting the plaint as insufficiently stamped was appealable. SARDARSINGJI *v.* GANPATSINGJI.

[I. L. R. 17 Bom. 56

48.—*Order refusing to set aside an injunction—Civil Procedure Code, ss.* 496, 588, cl. (24).] An appeal will lie under s. 588, cl. (24), of the Code of Civil Procedure, from an order under s. 496 of the Code refusing to set aside an injunction. *Nubbi Buksh* v. *Chasni*, I. L. R. 6 Calc. 168, referred to. ZABADA JAN *v.* MUHAMMAD TAIAB.

[I. L. R. 15 All. 8

49.—*Order refusing to discharge surety for insolvent—Civil Procedure Code, ss.* 336, 344.] An order refusing to discharge a surety under s. 336 of the Civil Procedure Code for an insolvent judgment-debtor filing his petition, where the surety was entitled to his discharge, is not an appealable order. BAIMA MAL *v.* JAMNA DAS.

[I. L. R 15 All. 183

(10) PROBATE.

50.—*Probate and Administration Act (V of* 1881), *s.* 86—*Order of District Judge admitting person as caveator—Civil Procedure Code, s.* 588, *cl.* (2).] S. 86 of the Probate and Administration Act (V of 1881) makes the Code of Civil Procedure applicable to orders passed under that Act. An appeal therefore lies to the High Court from the order of a District Judge admitting a person as a caveator under s. 69 of the Act; such an order is appealable under s. 588, cl. (2) of the Code. ABHIRAM DASS *v.* GOPAL DASS.

[I. L. R. 17 Calc. 48

51.—*Order refusing to make person party defendant to an application for probate—Probate and Administration Act (V of* 1881), *ss.* 53 *and* 86.] S. 86 read with s. 53 of the Probate and Administration Act (V of 1881), only allows an appeal to the High Court in cases in which an appeal is allowable under the Code of Civil Procedure. No appeal therefore lies against an order refusing to make a person opposing probate a party defendant to an application for probate. *Abirunnissa Khatoon* v. *Komurunnissa Khatoon*, I. L. R. 13 Calc. 100; and *Karman Bibi* v. *Misri Lal*, I. L. R. 2 All. 904, followed. KHETTRAMANI DASI *v.* SHYAMA CHURN KUNDU.

[I. L. R. 21 Calc. 539

APPEAL—*continued.*

(11) RECEIVERS.

52.—*Receiver, appointment of—Appealable order—Civil Procedure Code (Act XIV of* 1882), *ss.* 503, 505, 588 (24), *and* 589—*Bengal, North-Western Provinces, and Assam Civil Courts Act (XII of* 1887), *s.* 21.] An appeal lies from an order rejecting an application for a Receiver under s. 503 of the Code of Civil Procedure, and the order on appeal is final under s. 588. *Gossain Dulmir Puri* v. *Tekait Hetnarain*, 6 C. L. R. 467, followed. The Court to which such an appeal lies from the order of a Subordinate Judge is, under s. 21 of Act XII of 1887, the High Court where the value of the suit is above Rs. 5,000, and the District Judge's Court in other cases. BOIDYA NATH ADYA *v.* MAKHAN LAL ADYA.

[I. L. R. 17 Calc. 680

(12) SALE IN EXECUTION OF DECREE.

53.—*Sale of immoveable property set aside—Order refusing refund of price to purchaser—Civil Procedure Code, s.* 315.] No appeal lies from an order refusing a refund of price to a purchaser, the sale to whom has been set aside under s. 315 of the Civil Procedure Code. *Soudagar Mal* v. *Abdul Rahman Khan*, Weekly Notes, 1890, p. 85; *Tapesri Lal* v. *Deoki Nandan Rai*, Weekly Notes, 1890, p. 89; and *Ram Dial* v. *Ram Das*, I. L. R. 1 All. 181, referred to. *Baijnath Sahai* v. *Moheep Narain Singh*, I. L. R. 16 Calc. 535, dissented from. RAHIM BAKHSH v. DHURI.

[I. L. R. 12 All. 397

54.—*Default of purchaser at sale in execution—Deficiency in price arising on re-sale—Order on defaulting purchaser to make good such deficiency—Civil Procedure Code, ss.* 2, 293, 540, 588.] No appeal lies from an order under s. 293 of the Code of Civil Procedure directing a defaulting purchaser at a sale in execution of a decree to make good the loss happening on a re-sale occasioned by his default. *Ram Dayal* v. *Ram Das*, I. L. R. 1 All. 181; and *Baijnath Sahai* v. *Moheep Narain Singh*, I. L. R. 16 Calc. 535, dissented from. *Soudagar Mal* v. *Abdul Rahman Khan*, Weekly Notes, 1890, p. 85; *Rahim Baksh* v. *Dhuri*, I. L. R. 12 All. 397, followed. So *held* by EDGE, C. J., MAHMOOD and KNOX, JJ., STRAIGHT, J., dissenting. DEOKI NANDAN RAI *v.* TAPESRI LAL.

[I. L. R. 14 All. 201

ILAHI BAKHSH *v.* BAIJ NATH.

[I. L. R. 13 All. 569

(13) OBJECTIONS BY RESPONDENT.

55.—*Civil Procedure Code*, 1882, *s.* 561—*Civil Procedure Code Amendment Act (Act VII of* 1888), *s.* 48—*Time allowed for memorandum of objections.*] An appeal cannot definitely be posted until the Court has ascertained that notice of the appeal has been served on the respondent, and a date must then be fixed not less than one month from the date of service, as the respondent is-

APPEAL—*concluded.*

(13) OBJECTIONS BY RESPONDENT—*concld.*

entitled by s. 561 of the Code to that period within which he may file any objection he may have. SUNDARAM *v.* ANNANGAR.

[I. L. R. 13 Mad. 492

56.—*Civil Procedure Code*, 1882, *s.* 561—*Time for filing objections—Delay in filing them—Practice.*] Where a respondent in order to save the costs of copying the judgment of the Court below, the decree and other documents in the case, delayed sending instructions to counsel to draw objections to the decree until the paper books had been received from the appellant, at which date the period allowed for filing objections had expired, the Court refused to extend the time, or permit the objections to be filed. SULLEMAN EBRAHIMJI *v.* JOOSUB JAN MAHOMED.

[I. L. R. 14 Bom. 111

(14) GROUNDS OF APPEAL.

57.—*Appellant not allowed to raise in appeal a contention inconsistent with the case relied upon in the Courts below—Variance between pleading and proof—Practice.*] An appeal cannot be maintained upon a ground inconsistent with the case insisted on in the Courts below, notwithstanding that the new ground may be one that might have been brought forward, in the first instance, as an alternative. In a suit between the widows of two brothers deceased, the plaintiff's title rested on this, that her and the defendant's late husbands, respectively, having been the sons of the same father, had, therefore, been *sapindas* to each other; so that the plaintiff as the widow of the one would be the heir of the other, expectant on the death of his widow. In this character she sued to have set aside an adoption made by the defendant. The Courts, however, found that the plaintiff's husband was an illegitimate son, and not a *sapinda*, and the suit was dismissed. The plaintiff, now appellant, on findings of fact that both the sons were illegitimate, urged that, though they could not inherit from their father, they yet could succeed to the estate of one another:—*Held*, that this contention was so inconsistent with the case made below that it was now inadmissible. *Srimati Dasi* v. *Lalanmani*, 2 B. L. R. P. C. 64; 11 W. R. P. C. 27, referred to and followed. GAJAPATHI RADHIKA *v.* VASUDEVA SANTA SINGARO.

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APPEAL IN CRIMINAL CASES—*contd.*

(1) ACQUITTALS, APPEALS FROM.

1.—*Appeal by Local Government from judgment of acquittal — Criminal Procedure Code (Act X of 1882), s. 417.*] Under the Code of Criminal Procedure (Act X of 1882), the Local Government have the same right of appeal against an acquittal as a person convicted has of appealing against his conviction and sentence, and there is no distinction between the mode of procedure and the principles upon which both classes of appeals are to be decided. IN THE MATTER OF THE PETITION OF THE DEPUTY LEGAL REMEMBRANCER. QUEEN-EMPRESS *v.* BIBHUTI BHUSAN BIT.

[I. L. R. 17 Calc. 485

2.—*Appeal from refusal of Judge to add new charges—Appeal from interlocutary order—Framing additional charges—Criminal Procedure Code, 1882, s. 417—Penal Code, ss. 206, 423, 424.*] At the commencement of a trial before a Court of Session on a charge under s. 206 of the Penal Code, the Public Prosecutor applied to the Court to frame new heads of charge under ss. 423 and 424 of the Code. The Sessions Judge postponed passing any final decision upon this application, until it became apparent that the charge under s. 206 was not sustainable on the evidence to be adduced by the prosecution. After hearing the evidence for the prosecution on this charge, the Sessions Judge, without going into the defence, or recording the opinions of the assessors, passed an order of acquittal. At the same time he rejected the application for framing new heads of charge, holding, on the authority of *Queen-Empress* v. *Appa* (I. L. R. 8 Bom. 200), that he had no power to frame any new charges in addition to the original charge. He was also of opinion that the dismissal of a complaint, which the prosecutor had previously filed against the accused on the very charges which were sought to be added, was also a sufficient ground for rejecting the application. The Local Government appealed to the High Court against the order of acquittal. At the hearing of the appeal it was contended on behalf of the Crown that the Sessions Judge was wrong in refusing to frame additional charges as sought by the Public Prosecutor. The accused's counsel objected to this point being raised by Government in an appeal against an order of acquittal:—*Held, per* TELANG, J. (1) that under s. 417 of the Code of Criminal Procedure (Act X of 1882) it was not open to Government to appeal to the High Court on the ground of the Sessions Judge's refusal to add new charges, or against any other interlocutory order made during the trial. (2) That the Sessions Judge ought to have finally disposed of the application for framing additional charges at the very commencement of the trial when it was made, especially because it did not purport to be based on any facts other than those contained in the depositions recorded by the committing Magistrate. QUEEN-EMPRESS *v.* VAJIRAM.

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APPEAL IN CRIMINAL CASES—*contd.*

(2) ACTS.

3.—*Act XI of* 1846.—*Appeal to the High Court—Scheduled District Act (XIV of* 1874)—*Rule* 44 *of Rules framed under s.* 3 *of Act XI of* 1846—*Agent to Governor in Khandesh District.*] The accused were convicted under s. 201 of the Penal Code (Act XLV of 1860) of an offence committed in the village of Gulamba, in the Mehwas Estate of Nal, in the Khandesh District, and sentenced by the Agent to the Governor each to suffer rigorous imprisonment for five years. The Agent tried the case under the rules framed under Act XI of 1846. The accused appealed to the High Court under Rule 44 of the rules framed under s. 3 of Act XI of 1846:—*Held*, that the appeal did not lie to the High Court. Rule 44 was *ultra vires*, as no power was given by Act XI of 1845 to Government to confer appellate powers on the Sadar Foujdari Adalat, as was practically done by the rule. Act XI of 1846 being repealed in the Mehwasi villages by Act XIV of 1874, Rule 44 could not be continued either by the Notification published in the *Bombay Government Gazette* for 1879, Part I, p. 115, or by the Notification published in the *Bombay Government Gazette* for 1887, Part I, p. 19. QUEEN-EMPRESS *v.* SARYA.

[I. L. R. 15 Bom. 505

(3) CRIMINAL PROCEDURE CODE.

4.—*Criminal Procedure Code*, 1882, *ss.* 404, 452—*Right of appeal to the High Court by a person other than a European British subject jointly tried with such subject.*] A person, not being a European British subject, who is tried before a District Magistrate jointly with a European British subject, cannot claim under s. 452 of the Code of Criminal Procedure (Act X of 1882), the right of appeal to the High Court which is exclusively reserved to such European British subject. IN RE SOLOMON.

[I. L. R. 14 Bom. 160

5.—*Criminal Procedure Code, s.* 195—*Sanction to prosecution—Revision.*] No appeal lies from an order granting or refusing to grant sanction to prosecute under s. 195 of the Criminal Procedure Code. The proceeding under s. 195 of the Code of Criminal Procedure, by which such an order may be set aside, is a proceeding in revision and not by way of appeal. MEHDI HASAN *v.* TOTA RAM.

[I. L. R. 15 All. 61

6.—*Criminal Procedure Code, s.* 413—*Appealable sentence—Costs of complaint in Criminal Court, order on accused to pay—Fine—Court-fees Act (VII of* 1870), *s.* 31.] An order passed by a Magistrate under s. 31 of the Court-fees Act, directing an accused person to pay to the complainant the Court-fee paid on the petition of complaint, is no part of the sentence so as to make it a sentence of fine within the terms of s. 413 of the Code of Criminal Procedure, and an order therefore sentencing an accused person to 14 days' rigorous imprisonment and to pay the costs is not appealable. MADAN MANDUL *v.* HARAN GHOSE.

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APPEAL IN CRIMINAL CASES—*concld.*

(4) PRACTICE AND PROCEDURE.

7.—*Criminal Procedure Code, s.* 419—*Petition of appeal, presentation of.*] A petition of appeal sent by post is not presented to the Court within the meaning of Criminal Procedure Code, s. 419. QUEEN-EMPRESS *v.* ARLAPPA.

[I. L. R. 15 Mad. 137

8.—*Criminal Procedure Code, ss.* 420, 421, 422, *and* 423—*Appeal preferred by appellant in jail—Power of Appellate Court to dispose of appeal in absence of the appellant.*] Where an appeal, preferred under s. 420 of the Criminal Procedure Code, has been admitted by the Appellate Court, and notice has been properly given under s. 422, and the record of the case has been sent for and perused under s. 423, the Appellate Court is competent, under the last-mentioned section, to dispose of the appeal though the appellant is not present and is not represented by a pleader. The only limitation placed by s. 423, on the powers of the Appellate Court is that the Court, before disposing of the appeal, must peruse the record, and, if the appellant is present or is represented by a pleader, the appellant in person must be heard, or the pleader must be heard. So *held* by the Full Bench, (MAHMOOD, J., dissenting.) *Held*, by MAHMOOD, J., *contra*, that the principles of *audi alteram partem* and *ubi jus ibi remedium*, and the provisions of s. 422 of the Code, as to notice of appeal, imply that, where an appeal is admitted and not summarily rejected under s. 421, the appellant must have a real opportunity of being heard; that in the passage in s. 423 "after perusing the record and hearing the appellant or his pleader if he appears," the word "he" refers to the pleader, and must not be read as "either of them;" that, in any case, the words "if he appears," make it a condition precedent to the disposal of an appeal under the section that the appellant is heard, or at least has the choice of appearing; that the word "appears" refers to the *personal* appearance of the appellant; and that an appeal which has been admitted cannot be disposed of unless the appellant is before the Appellate Court, or can be heard within the meaning of s. 423. *Semble*, *per* MAHMOOD, J., but the High Court in appeal is competent to send for a criminal to appear before it to explain a difficulty in his case. QUEEN-EMPRESS *v.* POHPI.

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See LIMITATION ACT, 1877, s. 12.

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See LIMITATION ACT, 1877, ART. 177.

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(1) CASES IN WHICH APPEAL LIES OR NOT.

(*a*) APPEALABLE ORDERS.

1.—*Civil Procedure Code, s.* 595—*Application for leave to appeal to Privy Council—Order dismissing suit on preliminary issue—Interlocutory order.*] The plaintiff in a suit to recover certain property set up an adoption. The Court of First Instance held that the adoption was not proved and dismissed the suit without trying the issues framed with reference to other allegations in the pleadings. On appeal by the plaintiff the High Court passed a decree setting aside the decree of the Court of First Instance, declaring the alleged adoption to be established and remanding the suit for the trial of the remaining issues. The defendants sought to appeal to Her Majesty in Council against the decree of the High Court. The defendants' application was refused on the ground that that decree was not a final decree, and no appeal lay. TIRUNARAYANA *v.* GOPALASAMI.

[I. L. R. 13 Mad. 349

2.—*Civil Procedure Code*, 1882, *s.* 595—*Order directing accounts to be taken—Decree not final—Application for leave to appeal.*] Where a decree has been made directing accounts to be taken, but there is nothing so special in the case as to bring it under clause (*c*) of s. 595 of the Civil Procedure Code (Act XIV of 1882), leave to appeal to the Privy Council will not be given. RAHIMBHOY HUBIBBHOY *v.* TURNER.

[I. L. R. 14 Bom. 428

3.—*Prerogative right of Crown to admit appeal where leave to appeal refused by High Court—Final decree—Meaning of "final" in s.* 595 *of Civil Procedure Code* (*XIV of* 1882)—*Civil Procedure Code, s.* 601—*Procedure.*] Where a decree directing the taking of accounts which the defendant contends ought not to be taken at all, decides, in effect, that, if the result should be found to be against the defendant, he is liable to pay the amount, the decree is final within the meaning of s. 595 of the Civil Procedure Code (XIV of 1882) for the purpose of appeal. On the ground that a decree for an account was not final within that section, the High Court refused, under s. 601, to grant the defendant a certificate. On his application for special leave to appeal to Her Majesty in Council, not by way of an appeal from the local Court's refusal, but asking for the exercise of the prerogative right to admit an appeal:—*Held*, that, as leave could be granted on any other ground, should any appear, besides the ground that the Court had refused the certificate without good cause, while leave could also be granted on the latter ground, if established, to make this application was, perhaps, more convenient than to appeal from the order of refusal:—*Held*, also, that the real question in this suit having been the liability of the defendant to account to the plaintiff upon several claims, the decree had decided this against the defendant in such a way that, although the account had not been taken, the decree was final within s. 595. RAHIMBHOY HABIBBHOY *v.* TURNER.

[I. L. R. 15 Bom. 155

[L. R. 18 I. A. 6

(*b*) SUBSTANTIAL QUESTION OF LAW.

4.—*Rejection of application to take additional evidence on appeal—Civil Procedure Code, ss.* 568, 596.] The rejection of an application under s. 568 to an Appellate Court to take additional evidence on appeal cannot be said to involve any "substantial question of law" within the meaning of s. 596 of the Code so as to give the right to an appeal to the Privy Council. IN THE GOODS OF PREM CHAND MOONSHEE; UPENDRA MOHAN GHOSE *v.* GOPAL CHANDRA GHOSE.

[I. L. R. 21 Calc. 484

(*c*) CONCURRENT JUDGMENTS ON FACTS.

5.—*Case in which no question of law is involved—Civil Procedure Code*, 1882, *ss.* 596, 600—*Finding of facts not concurrent but in effect the same.*] Where there is no point of law involved in a case, the mere fact that the finding of the Appellate Court does not in terms coincide with the finding of the Original Court, is not sufficient, where the findings of fact of the two Courts are in effect the same, to give a right of appeal to the Privy Council, notwithstanding that the value of the suit is more than Rs. 10,000. *In the matter of the petition of Ashghar Reza*, I. L. R. 16 Calc. 287, distinguished. THOMPSON *v.* CALCUTTA TRAMWAYS COMPANY.

[I. L. R. 21 Calc. 523

(*d*) VALUATION OF APPEAL.

6.—*Appealable value—Suit for restitution of conjugal rights—Valuation of suit—Suit conducted up to appeal as if properly valued—Jurisdiction—Consent of parties.*] A suit for restitution of conjugal rights is not one to which any special money value can be attached for the purposes of jurisdiction: *Golam Rahman* v. *Fatima Bibi*, I. L. R. 13 Calc. 232, followed. *Held*, therefore, that no appeal lay as of right to Her Majesty in Council in such a suit, although the suit had been valued at Rs. 25,000, and that valuation had been relied on by the defendant, who had appealed to the High Court from the decision of the first Court which had gone against him. MOWLA NEWAZ *v.* SAJIDUNNISSA BIBI.

[I. L. R. 18 Calc. 378

APPEAL TO PRIVY COUNCIL—*continued.*

(1) CASES IN WHICH APPEAL LIES OR NOT —*concluded.*

(*d*) VALUATION OF APPEAL—*concluded.*

7.—*Civil Procedure Code, s.* 596—"*Value of the subject-matter of the suit*"—*Madras Civil Courts Act—Madras Act* (*III of* 1873), *s.* 14.] The Civil Courts Act (Madras Act III of 1873) does not control the construction of Civil Procedure Code, s. 596, and under that section the real market-value of the matter in dispute is the test as to whether or not an appeal lies to the Privy Council. PICHAYEE *v.* SIVAGAMI.

[I. L. R. 15 Mad. 237

(2) PRACTICE AND PROCEDURE.

8—*Time for appealing—Civil Procedure Code,* ss. 600, 602.—*Enlargement of time for making deposit of costs of appeal.*] The Court may enlarge the time for making the deposit required by Civil Procedure Code, s. 602, for cogent reasons under the rule in *Burjore* v. *Bhagana*, L. R. 11 I. A. 7; I. L. R. 10 Calc., 557; but those reasons must be such as would lead the Court to believe that the party was diligent in due time to be prepared to lodge the deposit within the limited period, and that he was prevented from doing so not owing to absence and the difficulty of getting funds, but owing to some circumstances accidental or otherwise over which he had no control, or owing to mistake which the Court would consider not unreasonable or caused by negligence. RANGASAYI *v.* MAHALAKSHMAMMA.

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[I. L. R. 14 Mad. 392 note

9.—*Evidence—Exhibits marked for identification afterwards marked as "admitted on both sides" by Bench Clerk—Certificate by Court as to the endorsement on exhibits—Record of appeal to the Privy Council.*] In an application for a certificate that a limited meaning should be placed upon endorsements made by the Bench Clerk on certain exhibits printed in the paper-book in a suit, which had gone on appeal to the Privy Council, the Court, considering the reasons for the application to have arisen from the nature of the case and from the contentions on either side, left the matter to be dealt with by their Lordships of the Judicial Committee, at the same time directing its order to be forwarded to the Privy Council. RATTAN KOER *v.* CHOTAY NARAIN SINGH.

[I. L. R. 21 Cal. 476

(3) CRIMINAL CASES.

10.—*Refusal of leave to appeal—General rule as to refusal of leave to appeal in criminal cases—Misdirection of a jury not of itself a ground.*] Although in very special and exceptional circumstances, leave to appeal to Her Majesty in Council may be granted in a criminal case, no countenance was given to the view that an appeal would be allowed merely on the ground that the Judge trying the case had misdirected the Jury. There was no reason to believe that there had been any misdirection by the Judge, or that he had, as he was alleged by the petitioner to have done, misconstrued, in charging the jury, a section of the Penal Code. Not only on the latter ground, but on the broader ground above stated, the petition was rejected. IN THE MATTER OF MACCREA.

[I. L. R. 15 All. 310

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APPEAL TO PRIVY COUNCIL—*concluded.*

(3) CRIMINAL CASES—*concluded.*

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[I. L. R. 13 All. 171

——, Poverty of—

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[I. L. R. 17 Calc. 291

See VARIANCE BETWEEN PLEADING AND PROOF.

[I. L. R. 17 Bom. 772

(1) EXERCISE OF POWERS IN VARIOUS CASES.

1.—*Arbitration, reference to—Power to refer to arbitration a case on appeal—Civil Procedure Code,* 1882, *s.* 582.] Under s. 582 of the Civil Procedure Code an Appellate Court has power to refer a case before it to arbitration if the parties wish it to be referred. *In re the petition of Sangaralingam Pillai,* I. L. R. 3 Mad. 78, and *Bhugwan Das Marwari* v. *Nund Lal Sein,* I. L R. 12 Calc. 173, followed. SURESH CHUNDER BANERJEE *v.* AMBICA CHURN MOOKERJEE.

I. L. R. 18 Calc. 507

2.—*Issues, reference of, for determination—Civil Procedure Code ss.* 566, 567—*Transfer of case to another Court.*] Where an Appellate Court has made an order of reference under s. 566 of the Code of Civil Procedure, the return to such order must be made to the same Court, and such Court is not competent to transfer the appeal for disposal elsewhere. UDIT NARAIN SINGH *v.* JHANDA.

[I. L. R. 15 All. 315

3.—*Jurisdiction, Subordinate Court acting without—Erroneous exercise of jurisdiction by Subordinate Court—Appeal, ground of.*] Where the High Court is the Court of Appeal from any particular Subordinate Court, and that Court acts without jurisdiction in the trial of a suit or an appeal before it, the High Court has power as an Appellate Court to set right the proceedings of such Subordinate Court. *Kishna Ram* v. *Hingu Lal,* I. L. R. 4 All. 237; and *Tota Ram* v. *Insur Das,* Weekly Notes, 1887, p. 76, overruled. JWALA PRASAD *v.* SALIG RAM.

[I. L. R. 13 All. 575

4.—*Memorandum of appeal—Memorandum of appeal insufficiently stamped — Court-fees Act ss.* 6, 28—*Levy of stamp-duty.*] When a memorandum of appeal is insufficiently stamped the deficient stamp-duty should be levied by the Appellate Court. CHENNAPPA *v.* RAGHUNATHA.

[I. L. R. 15 Mad. 29

5.—*Plaint, amendment of.*] An amendment of a plaint ought not to be allowed on appeal, if by so doing the defendant is likely to be precluded from pleading limitation; and where no leave to amend was asked for in the Court of First Instance, MALLIKARJUNA *v.* PALLAYA.

[I. L. R. 16 Mad. 319

(2) EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

6.—*Evidence on appeal—Civil Procedure Code, s.* 142*A—Document rejected as inadmissible, but allowed to remain on the record.*] Where a document tendered in evidence in a Court of First Instance was rejected as inadmissible, but was nevertheless allowed to remain on the record of the case:—*Held,* that the mere fact of the document remaining on the record did not make it evidence in the Appellate Court, but it must be tendered as evidence in the Appellate Court and accepted thereby. HAR GOBIND *v.* NONI BAHU.

[I. L. R. 14 All. 356

7.—*Civil Procedure Code, s.* 568.] The test as to whether additional evidence should be received in an Appellate Court under s. 568 of the Code of Civil Procedure depends upon the question whether or no the Appellate Court requires the evidence "to enable it to pronounce judgment or for any other substantial cause"; as to this the Appellate Court is to be the sole judge. IN THE GOODS OF PREM CHAND MOONSHEE; UPENDRA MOHAN GHOSE *v.* GOPAL CHANDRA GHOSE.

[I. L. R. 21 Calc. 484

(3) REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW.

(*a*) UNSTAMPED DOCUMENTS.

8.—*Application insufficiently stamped—Court-fees Act* (*VII of* 1870, *ss.* 6, 28—*Application for review.*] On the 26th January 1889, an application was presented to the Munsarim of the District Judge's Court for review of a judgment passed on the 19th December 1888. The application was insufficiently stamped, and the Munsarim endorsed on it "stamp insufficient." On this a dispute ensued between the pleader for the applicant and the Munsarim as to the sufficiency of the stamp. On the 25th April 1889, the deficiency pointed out by the Munsarim was made good. On the 26th May the Judge admitted the application, on the applicant paying the Court-fee payable on an application presented on or after ninety days from the date of the decree:—*Held,* that s. 6 and the first paragraph of *s.* 28 of the Court-fees Act (VII of 1870) were applicable; that there was no mistake or inadvertence within the meaning of the second paragraph of s. 28; that the Judge had no power under the circumstances to admit the application as one presented after ninety days from the date of the decree; and that there was no presentation within ninety days of an application which could have been received. MUNRO *v.* CAWNPORE MUNICIPAL BOARD.

[I. L. R. 12 All. 57

APPELLATE COURT—*continued.*

(4) OTHER ERRORS AFFECTING MERITS.

9.—*Civil Procedure Code*, 1882, *s.* 578—*Institution of suit in Subordinate Judge's Court instead of Munsif's Court.*] The words "not affecting the jurisdiction of the Court" in s. 578 of the same Code mean "not affecting the competency of the Court to try." The error in instituting a suit in a Subordinate Judge's Court instead of in that of the Munsif is not an error which affects the jurisdiction of the former Court within the meaning of s. 578. MATRA MONDAL *v.* HARI MOHUN MULLICK *alias* MOTHURA MOHAN MULLICK.

[I. L. R. 17 Calc. 155

10.—*Property wrongly attached—Joint suit by holders of two shares to have their shares declared not liable to attachment—Misjoinder of causes of action—Civil Procedure Code, s.* 578—*Amendment of plaint.*] A decree-holder in execution of a decree against one *G L* attached a house as belonging to *G L* and his two sons forming a joint Hindu family. The sons objected that the house had previously been partitioned and was held by them and their father in separate shares, but their objection was disallowed. They then brought a joint suit for a declaration that their respective portions of the house were not liable to attachment in execution of a decree against their father. No objection was taken to the frame of that suit, and the Court of First Instance gave the plaintiffs a decree on the finding that partition had in fact taken place prior to the suit in which the defendant, judgment-creditor, had obtained his decree. On appeal by the judgment-creditor the lower Appellate Court dismissed the suit entirely on the grounds of misjoinder of causes of action. The plaintiff appealed to the High Court:—*Held*, on these facts, that the plaintiffs should have been allowed to amend their plaint by striking out the name of one of them, and that, though there was irregularity in the procedure, such irregularity did not affect the merits of the case or the jurisdiction of the Court within the meaning of s. 578 of the Code of Civil Procedure. BEHARI LAL *v.* KODU RAM.

[I. L. R. 15 All. 380

(5) INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT.

11.—*Application to set aside sale in execution of decree—Court reversing Lower Court on evidence taken before necessary party was added—Superintendence of High Court—Civil Procedure Code, s.* 622.] One alleging himself to be the undivided brother and, as such, the legal representative of a deceased judgment-debtor, applied to have set aside a sale of certain property alleged by him to be joint family property, which had taken place in execution of the decree. He did not make the purchaser a party to such application. The Court of First Instance dismissed the application. On appeal, the Appellate Court made the purchaser a party to the proceedings, and holding that there was irregularity in conducting the sale reversed the order of the Court of First Instance:—*Held*, that the Appellate Court was wrong in so holding

APPELLATE COURT—*continued.*

(5) INTERFERENCE WITH AND POWER TO VARY ORDERS OF LOWER COURT—*concld.*

upon evidence recorded by the Court of First Instance when the purchaser was not a party to the proceedings, and the order of the Appellate Court was set aside under s. 622 of the Code. SUBBARAYADU *v.* PEDDA SUBBARAZU.

[I. L. R. 16 Mad. 476

(6) OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

12.—*Civil Procedure Code, s.* 542.—*Plea sought to be raised that was not taken in the memorandum of appeal.*] S. 542 of the Code of Civil Procedure was intended to confer upon the Court a power exerciseable by it alone; it was not intended to enable an appellant to take the respondent by surprise by urging matter of which he had no notice. BANSIDHAR *v.* SITA RAM.

[I. L. R. 13 All. 381

13.—*Objection on appeal to extent of share awarded to adopted son.*] In a suit by an adopted son to recover his share in his adoptive father's estate, a son having been born to the adoptive father subsequently to the plaintiff's adoption, the Court of First Instance awarded the plaintiff a fourth share of the property in dispute. The defendant appealed to the District Court, but in appeal raised no question as to the extent of the share awarded to the plaintiff. On second appeal to the High Court it was contended that, in any event, the plaintiff was only entitled to a fifth share:—*Held* that, under the circumstances and having regard to the nature of the question, the point might be taken in second appeal on behalf of the defendant, and the High Court varied the decree by awarding the plaintiff a fifth share instead of a fourth share, but ordered the appellant (defendant) to bear his own costs of the appeal. GIRIAPA *v.* NINGAPA.

[I. L. R. 17 Bom. 100

14.—*Objection to form of notice of sale for arrears of rent under Bengal Regulation (VIII of* 1819), *s.* 8.] An objection to the form of the notice of sale under s. 8 of Bengal Regulation VIII of 1819 was taken for the first time in the Appellate Court:—*Held*, that as a defect fatal to the whole proceeding appeared in the notice, the objection was competently taken in that Court. *Macnaghten* v. *Mahabir Pershad Singh*, I. L. R. 9 Calc. 656; L. R. 10 I. A. 25, distinguished. AHSANULLA KHAN BAHADUR *v.* HARICHARN MOZUMDAR.

[I. L. R. 20 Calc. 86

[L. R. 19 I. A. 191

15.—*Jurisdiction, objection to—Objection apparent on face of plaint.*] Where the objection was not taken in the Court below, but was apparent on the face of the plaint and had reference to the jurisdiction of the Court, the Court *held* they must consider it. RAMAYYA *v.* SUBBARAYUDU.

[I. L. R. 13 Mad. 25

APPELLATE COURT—*continued.*

(6) OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*continued.*

16.—*Jurisdiction, objection to—N.-W. P. Rent Act (XII of 1881), s. 206.*] Under s. 206 of the N.-W. P. Rent Act, when no objection to the jurisdiction was taken in the first Court, an objection to the jurisdiction is not to be entertained in the Appellate Court, but the Judge must try the case upon the facts, and apply the law applicable to those facts. *Debi Saran Lal* v. *Debi Saran Upadhia*, I. L. R. 6 All. 378, approved. MADHO LAL v. SHEO PRASAD MISR.

[I. L. R. 12 All. 419

17.—*Parties, non-joinder of—Defect of parties.*] Where a suit is brought by one member of an undivided Hindu family to recover land, the property of the family, and no objection is taken at the hearing on the ground of the non-joinder of the plaintiff's co-parceners, it is not open to an unsuccessful defendant to raise such objection on appeal. The objection should be taken at the first hearing at as early a stage as possible. PARAMASIVA *v.* KRISHNA.

[I. L. R. 14 Mad. 498

See RAJNARAIN BOSE *v.* UNIVERSAL LIFE ASSURANCE CO.

[I. L. R. 7 Calc. 594, at p. 603

18.—*Setting up new case on appeal—Suit to set aside sale on ground of fraud, misrepresentation, &c., by vendor—Raising issue as to breach of covenant for title.*] When a vendee who sues to cancel a sale on the ground of fraud, misrepresentation or concealment by his vendor fails to establish those grounds of relief, he is not entitled to set up in second appeal a case founded on the implied covenant for title under the Transfer of Property Act, s 55. MAHOMED *v.* SITARAMAYYAR.

[I. L. R. 15 Mad. 50

19.—*Defence not raised in the lower Court—Declaratory decree, suit for—Objection to declaratory decree.*] *B J*, a Hindu widow, made a will disposing of property, of which under an award she had only the use during her life, and to which the plaintiff, her son, was entitled after her death. While she was still living, the plaintiff filed this suit, praying that the will might be declared invalid. The defendants were the testatrix and those who took under the will. While the suit was pending, the testatrix died. The Subordinate Judge passed a decree in plaintiff's favour and declared the will invalid. The defendants appealed, and contended for the first time, in appeal, that the allegations in the plaint, *viz.*, that the will was in their favour, and that they (the defendants) were interested in denying the plaintiff's title as reversioner, did not constitute a case in which, in the exercise of a sound judicial discretion, a declaratory decree ought to be made:—*Held*, that as the objection was taken for the first time in appeal, it would be unjust to allow

APPELLATE COURT—*concluded.*

(6) OBJECTION TAKEN FOR FIRST TIME ON APPEAL—*concluded.*

the defendants to benefit after they had failed to resist *G's* claim on the merits. MAGANLAL PURUSHOTTAM *v.* GOVINDLAL NAGINDAS.

[I. L. R. 15 Bom. 697

See BOMBAY-BURMAH TRADING CORPORATION *v.* SMITH.

[I. L. R. 17 Bom. 197

20.—*Madras Local Boards Act (Madras Act V of 1884), s. 27.*] An objection that the suit was not properly framed was not allowed to be taken for the first time on second appeal in a suit brought under the Madras Local Boards Act. PRESIDENT OF THE TALUK BOARD *v.* NARAYANAN.

[I. L. R. 16 Mad. 317

APPLICATION BY PERSON NOT PARTY TO SUIT.

See PRACTICE—CIVIL CASES—APPLICATION BY PERSON NOT PARTY.

[I. L. R. 17 Calc. 285

APPLICATION TO ANOTHER JUDGE AFTER REFUSAL BY ONE.

See PRACTICE—CIVIL CASES—APPLICATION AFTER REFUSAL.

[I. L. R. 16 Bom. 511

APPOINTMENT, POWER OF.

See HINDU LAW — ENDOWMENT — DISMISSAL OF MANAGER.

[I. L. R. 17 Bom. 600

See HINDU LAW—WILL—CONSTRUCTION—SPECIAL CASES OF CONSTRUCTION—GIFT TO A CLASS.

[I. L. R. 15 Bom. 326

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[I. L. R. 15 Mad. 492

APPRAISEMENT PROCEEDINGS, COLLECTOR ACTING IN.

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APPROVERS.

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R. 15 Mad. 352

1.—*Conditional pardon granted and afterwards cancelled—Trial of persons whose pardon has been cancelled—Criminal Procedure Code, s. 339.*] It is unfair to put an approver, whose conditional

APPROVERS—*concluded.*

pardon has been cancelled on trial, along with other prisoners, in the course of whose trial such approver has given evidence. QUEEN-EMPRESS *v.* RAMA TEVAN.

[I. L. R. 15 Mad. 352

2.—*Pardon tendered and afterwards withdrawn—Criminal Procedure Code, ss.* 338, 339.] An accused person to whom a tender of pardon has been made, and who has given evidence under that pardon against persons who were co-accused with him, should not, if such pardon is withdrawn, be put back into the dock and tried as if he had never received a tender of pardon, but his trial should be separate from, and subsequent to, that of the persons co-accused with him. QUEEN-EMPRESS *v.* MULUA.

[I. L. R. 14 All. 502

ARBITRATION.

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[I. L. R. 19 Calc. 275

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—ARBITRATION, REFERENCE TO.

[I. L. R. 18 Calc. 507

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[I. L. R. 19 Calc 334

(1) ARBITRATION UNDER SPECIAL ACTS.

1.—*N.-W.P. Land Revenue Act (XIX of* 1873), *s.* 221—*Civil Procedure Code, s.* 521—*Award delivered after expiration of time allowed by Court.*] The principle of the ruling of the Privy Council in *Har Narain Singh* v. *Chaudhrain Bhagwant Kuar*, I. L. R. 13 All. 300; L. R. 18 I. A. 51, is applicable also to arbitrations under s. 221 of Act No. XIX of 1873. GAURI SHANKAR *v.* BABBAN LAL.

[I. L. R. 14 All. 347

ARBITRATION—*continued.*

(2) REFERENCE OR SUBMISSION TO ARBITRATION.

2.—*Jurisdiction of Court over arbitrators—Civil Procedure Code (Act XIV of* 1882), *ss.* 508, 516.] When a Court has referred a suit to arbitration it has jurisdiction over the arbitrators to compel them to give up documents filed before them as exhibits during the course of the arbitration, and to return the original records of the suit which may have been handed to them. Such jurisdiction can be exercised by an application made in the suit on notice to the arbitrators. NURSING CHUNDER DAWN *v.* NUFFUR CHUNDER DUTT.

[I. L. R. 17 Calc. 832

(3) APPOINTMENT OF ARBITRATORS AND UMPIRES.

3.—*Appointment of arbitrator by Court.*] *Semble:*—Where no arbitrator has been named in an agreement, and the aid of the Court in the appointment of an arbitrator is invoked, the parties ought to have an opportunity of being heard upon the selection to be made. *Pestonjee Nusserwanjee* v. *Manockjee*, 12 Moore's I. A. 112, referred to. COLEY *v.* DACOSTA.

[I. L. R. 17 Calc. 200

4.—*Civil Procedure Code (Act XIV of* 1882), *s.* 510—*Power of Court to appoint new arbitrators*] The Court has power under s. 510 of the Code of Civil Procedure to appoint a new arbitrator in the place of another, only when the latter had consented to act as arbitrator. *Pugardin Ravutan* v. *Moidinsa Ravutan*, I. L. R. 6 Mad. 414, approved of. BEPIN BEHARI CHOWDHRY *v.* ANNODA PROSAD MULLICK.

[I. L. R. 18 Calc. 324

5.—*Umpires—Appointment of umpire by arbitrators—Mode of appointment prescribed by contract—Delegation by arbitrators of their right to appoint umpire.*] A contract provided that disputes between the parties were to be referred to the arbitration of two merchants, and that, should the arbitrators be unable to agree, they should appoint an umpire. The plaintiffs and defendant referred their dispute to two arbitrators. These arbitrators disagreed in their report, and referred the case to the Bombay Chamber of Commerce for the appointment of an umpire. The Chamber of Commerce appointed an umpire, who made his award:—*Held*, that the appointment of the umpire was invalid. The arbitrators could not delegate the power of appointment conferred on them by the contract. SMITH *v.* LUDHA GHELLA DAMODAR.

[I. L. R. 17 Bom. 129

(4) REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION.

6.—*Grounds for revocation of arbitration—Long and unreasonable delay in the conduct of the proceedings—Civil Procedure Code (Act XIV of* 1882), *s.* 523.] A submission to arbitration can only be

ARBITRATION—*continued.*

(4) REVOCATION OF, OR WITHDRAWAL FROM, ARBITRATION—*concluded.*

revoked on good grounds. The claimant, in a reference to arbitration, is the person on whom, *cæteris paribus*, it is incumbent to promote the conduct of the proceedings; and when, therefore, there is a long and unreasonable delay unexplained by any act of the other party, either conducing to it or consenting to it or waiving it, the latter is, *primâ facie*, entitled to decline to go on with the reference, and to revoke the agreement for submission. Where an agreement to refer has been duly revoked, the Court is incompetent to order it to be filed under s. 523 of the Code of Civil Procedure. COLEY *v.* DACOSTA.

[I. L. R. 17 Calc. 200

(5) AWARDS.

(*a*) VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE.

7.—*Award referring parties to separate suit—Civil Procedure Code*, 1882, *s.* 522.] After issues had been framed in a suit to wind up a partnership the matter was referred to an arbitrator who made his award, and with regard to certain property not part of the partnership property he referred the parties to a separate suit:—*Held*, that the award was not illegal by reason of its comprising the reference of the parties to a separate suit. VENKAYYA *v.* VENKATAPPAYYA.

[I. L. R. 15 Mad. 348

8.—*Civil Procedure Code, ss.* 514, 521—*Enlargement of time for award, after period fixed for making it had expired.*] A suit was referred to an arbitrator, who did not make his award within the period limited for that purpose. After that period had expired, an application was made for its extension, both parties consenting; the application was granted, and the award was made within the time so extended, and a decree was passed in its terms:—*Held*, that the order extending the time was not illegal, and the party dissatisfied with the decree was not entitled to have the award and the decree made upon it set aside. LAKSHMINARASIMHAM *v.* SOMASUNDARAM.

[I. L. R. 15 Mad. 384

9.—*Civil Procedure Code, ss.* 508, 514, 521—*Invalidity of award when not made within the time fixed by the Court—Costs.*] When once an award has been delivered it is no longer competent to the Court to grant further time, or to enlarge the period for the delivery of the award under s. 514 of the Code of Civil Procedure. Where an award was not made within the period fixed by the Court's order, but was made after the date given in the last order extending the time for its delivery, *held*, that the award was invalid. The decree of the Court dealing with the award as if duly made within the time, could not be treated as enlarging it. The judgment in *Chuha Mal* v. *Hari Ram*, I. L. R. 8 All. 548, approved. Order to be that the suit should proceed. Neither party

ARBITRATION—*continued.*

(5) AWARDS—*concluded.*

to be entitled to costs in either Court below after the first judgment with regard to the stage at which the objection was taken; and the costs prior to that to abide the issue. HAR NARAIN SINGH *v.* CHAUDHRAIN BHAGWANT KUAR.

[I. L. R. 13 All. 300
[L. R. 18 I. A. 55

The principle of this case is applicable also to arbitration under s. 221 of the N.-W.P. Land Revenue Act (XIX of 1873). GOURI SHANKAR *v.* BABBAN LAL.

[I. L. R. 14 All. 347

10.—*Civil Procedure Code, ss.* 514 *and* 521—*Power of Court to extend time for making award.*] A Court has power to act under s. 514 of the Code of Civil Procedure at any time before the award is actually made, whether the time previously limited for making the award has expired or not. *Har Narain Singh* v. *Chaudhrain Bhagwant Kuar*, I. L. R. 13 All. 300, referred to. RAM MANOHAR MISR *v.* LAL BEHARI MISR.

[I. L. R. 14 All. 343

(6) PRIVATE ARBITRATION.

11.—*Civil Procedure Code, s.* 525—*Suit on a private award—Alternative claim on original consideration—Withdrawal of claim on award.*] The plaintiff lent money to two of the defendants, who were partners with the third defendant, for the purposes of the partnership and obtained promissory notes from them. Disputes which arose between them were referred to arbitrators, who made an award. An application by the plaintiff to have the award made a rule of Court was opposed by defendant No. 1, and the plaintiff was referred to a regular suit. He now brought his suit in the alternative on the award and on the promissory notes. The award was found to be unenforceable. The plaintiff then declared himself satisfied to withdraw his suit as far as the award was concerned, and the Court passed a decree for plaintiff on the merits. Defendant No. 3 alone having appealed, the Court of First Appeal held that the plaintiff must succeed or fail on the award, and that the withdrawal of the prayer for a decree on the award altered the nature of the suit; and finding that there was no evidence of misconduct on the part of the arbitrators, he passed a decree in the terms of the award. On a second appeal preferred by defendant No. 1:—*Held*, that this procedure was right. NARASAYYA *v.* RAMABADRA.

[I. L. R. 15 Mad. 474

12.—*Civil Procedure Code* (*XIV of* 1892) *s.* 525—*Application for filing an award registered as a suit—Grounds for not filing award.*] An application for filing an award being registered as a suit, the defendant raised objections, and the following issues were framed:—(1) Whether a certain arbitrator was nominated or accepted as

one of the arbitrators by the defendant? (2) Whether there was any and what illegality apparent on the face of the award? (3) Whether the proceedings conducted by the arbitrators were illegal?:—*Held*, that the objections taken by the defendant, which were the subject of the above issues, precluded the Court from filing the award. VENKATESH KHANDO *v.* CHANAPGAVDA.

[I. L. R. 17 Bom. 674

13.—*Application to file private award—Objection to award, effect of—Power of Court—Civil Procedure Code, ss.* 520, 521, 525, 526.] *Held* by the Full Bench (PETHERAM, C.J., and PRINSEP, PIGOT, MACPHERSON and GHOSE, JJ.):—Where an application is made to a Court for filing a private award, and objections are raised in a verified written statement, and the objections are such as fall within s. 521 of the Code of Civil Procedure, the Court is not bound to hold its hand and reject the application, but it is the duty of the Court to inquire into the validity of the objections raised, and thereupon determine whether the award should be filed or not. *Per* PRINSEP, PIGOT, and MACPHERSON JJ.—Where on such an application an objection is taken that the matters in dispute were never referred to arbitration, and is therefore not on the grounds mentioned in s 521, the Court has no jurisdiction to deal with it, but should reject the application and refer the parties to a regular suit. SURJAN RAOT *v.* BHIKARI RAOT.

[I. L. R. 21 Calc. 213

ARBITRATORS, POWER OF COURT OVER.

See ARBITRATION — REFERENCE OR SUBMISSION TO ARBITRATION.

[I. L. R. 17 Calc. 832

[I. L. R. 18 Calc. 324

ARMS ACT (XI of 1878).

1.—s. 19.—*Going armed without license—License to carry arms, production of—Retainer carrying arms.*] A servant of a person who possessed a license for two swords and a gun, which license also covered one retainer, was stopped by the Police on the road while carrying a sword. On being asked to produce his license he was unable to do so, it not then being with him. No opportunity was afforded him of producing the license, but he was charged with an offence under s 19 of Act XI of 1878, and on these materials convicted and fined:—*Held*, that the conviction was wrong. The law does not require a licensee always to have his license with him. If under such circumstances on being required to produce it, he is prepared to do so on a reasonable opportunity being given him to get it, and it exists, he should not be prosecuted; if prosecuted, the production of the license at the trial is a sufficient answer to the charge of infringing the Arms Act. *Held*, further, that a license granted to a person to carry arms and including a retainer, authorises any retainer to carry the arms specified with the permission of his master, and does not restrict him merely to carry them while in the actual presence of his master. QUEEN-EMPRESS *v.* KISHUNWA.

[I. L. R. 20 Calc. 444

2.—s. 19, cl. (c).—"*Going armed*"—*Presumption as to persons found carrying arms.*] Where a person is found carrying arms apparently in contravention of the provisions of the Arms Act, it must be presumed, in the absence of proof to the contrary, that he is carrying such arms with the intention of using them should an opportunity of using them arise. *Queen-Empress* v. *Williams*, Weekly Notes, 1891, p. 208, explained and approved. QUEEN-EMPRESS *v.* BHURE,

[I. L. R. 15 All. 27

3.—s. 19 (f) and s. 25.—*Unlawful possession of arms—Search-warrant, contents of—*"*Possession,*" *what evidence of necessary, where arms are found in common room of joint family house.*] When a Magistrate issues a search-warrant under s. 25 of the Indian Arms Act, 1878, it is necessary that he should record the grounds of his belief that the person against whom the warrant is issued has in his possession arms, ammunition, or military stores for an unlawful purpose. Where proceedings under the Indian Arms Act, 1878, in respect of the unlawful possession of arms are taken against a member of a joint Hindu family not being the head of such joint family, and arms are found in a common room of the joint family house, it is incumbent upon the prosecution to give good evidence that such arms are in the exclusive possession and control of the particular member of the joint family who is sought to be charged with their possession. QUEEN-EMPRESS *v.* SANGAM LAL.

[I. L. R. 15 All. 129

ARMY ACTS, 1881 (44 & 45 Vict., c. 58), s. 151.

See SMALL CAUSE COURT PRESIDENCY TOWNS — JURISDICTION — ARMY ACT.

[I. L. R. 18 Calc. 114, 372

——, 1888 (51 Vict. c. 4), s. 7.

See SMALL CAUSE COURT PRESIDENCY TOWNS — JURISDICTION — ARMY ACT.

[I. L. R. 18 Calc. 144, 373

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1. Civil Arrest 61
2. Criminal Arrest 61

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[I. L. R. 20 Calc. 874

—— before Judgment.

See WITHDRAWAL OF SUIT.

[I. L. R. 15 Bom. 160

ARREST—*concluded.*

(1) CIVIL ARREST.

1.—*Privilege from arrest—Civil Procedure Code, s.* 642—*Insolvent Act* (11 *&* 12 *Vict., c.* 21), *s.* 51—*Exemption from arrest on civil process* redeundo.] The Commissioner in Insolvency committed an insolvent to jail by an order under s. 51 of the Insolvent Act, and he was released by order of the Full Bench who held that a Commissioner in Insolvency has no power under that section to commit an insolvent to jail, but must leave the excepted judgment-creditors (if any) to their ordinary remedies for the time mentioned in the order. The insolvent having been discharged from jail under the rule laid down by the Full Bench as above, was immediately arrested on a warrant obtained by a judgment-creditor :—*Held, per* SHEPHARD, J., that the insolvent was not privileged from arrest as being on his way back from Court. SAMARAPURI *v.* PARRY AND Co.

[I. L. R. 13 Mad. 150

(2) CRIMINAL ARREST.

2.—*Criminal Procedure Code, s.* 55—*Right to option of release on bail.*] Where a person is arrested by the Police under the provisions of s. 55 of the Code of Criminal Procedure he should always be given the option of release on reasonable bail being supplied. IN THE MATTER OF THE PETITION OF DAULAT SINGH.

[I. L. R. 14 All. 45

ARTICLES OF ASSOCIATION.

See CASES UNDER COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

See COMPANY—MEETINGS AND VOTING.

[I. L. R. 15 Bom. 164

ASSAM LAND AND REVENUE REGULATION (I OF 1886).

——, ss. 2, Prov. (b), 12, and ss. 39, 151 and 154.—*Settlement-holder, his rights under a settlement—Nisf-kherajdar, his rights to a settlement.*] The effect of ss. 39 and 151 of the Assam Land and Revenue Regulation, 1886, is that a settlement made by a Settlement Officer, unless interfered with by the Chief Commissioner, is final; but the settlement-holder does not thereby acquire any right to the land so settled as against any person claiming rights to it. The effect of an order by the Government of India before the passing of the Assam Regulation in regard to the right of a *nisf-kherajdar* to hold lands found upon survey to be in excess of his *nisf-kheraj* estate, and to obtain a settlement thereof, considered. In 1881 *S*, a *nisf-kherajdar*, obtained a settlement for a year of certain lands which were found upon survey to be in excess of his *nisf-kheraj* estate. Subsequently a *pottah* was granted to *S* for a portion of the excess lands, while the other portion was settled by the revenue authorities under a *kobala pottah* with *M*, who entered into possession under his settlement. In a suit by *S*, the *nisf-kherajdar*, for a declaration of his right to a settlement of the portion settled with *M*, and for possession, *held*, that having regard to the provisions of s. 2, proviso (*b*), s. 12 of the Regulation, and the order of the Government of India, the *nisf-kherajdar* was entitled to a declaration of his right to a settlement, but in view of s. 154 he was not entitled to a decree for possession. MADHUB NATH SURMA *v.* MYARANI MEDHI.

[I. L. R. 17 Calc. 819

ASSESSOR.

——, Disqualification of.

See LAND ACQUISITION ACT, s. 19.

[I. L. R. 17 Bom. 299

——, Evidence not taken in presence of.

See CRIMINAL PROCEEDINGS.

[I. L. R. 15 All. 136

——, in Land Acquisition cases.

See LAND ACQUISITION ACT, s. 19.

[I. L. R. 17 Bom. 299

See LAND ACQUISITION ACT, s. 22.

[I. L. R. 17 Calc. 380, 388

1.—*Criminal Procedure Code (Act X of* 1882), *ss.* 268, 272, 284, 285—*Trial with the aid of assessors—Commencement of the trial.*] The accused was committed for trial to the Sessions Court on a charge of murder. He pleaded not guilty to the charge, and claimed to be tried. Thereupon the Sessions Judge chose two assessors; but as one of them was ill, his attendance was at once dispensed with, and the Sessions Judge proceeded with the trial with the aid of the other assessor only :—*Held*, that this procedure was illegal and contrary to ss. 284 and 285 of the Code of Criminal Procedure (Act X of 1882). The attendance of one of the assessors having been dispensed with before the commencement of the trial, the Sessions Judge ought to have chosen another assessor in his place. A trial in the Sessions Court, "with the aid of assessors," does not begin with the reading of the charge, as the assessors are chosen under s. 272 of the Code of Criminal Procedure (Act X of 1882), only if the accused does not plead to the charge or claims to be tried. QUEEN-EMPRESS *v.* BASTIANO.

[I. L. R. 15 Bom. 514

2.—*Criminal Procedure Code, ss.* 268, 285—*Assessors prevented by death or illness from attending a trial.*] During the course of a trial before a Sessions Court with three assessors, one assessor died at an early stage of the proceedings. Later on another assessor became too ill to take any further part in the trial, and the third assessor was obliged to retire at the beginning of the accused's pleader's address to the Court and did not return until it was finished :—*Held*, that the law contemplated the continuous attendance of

ASSESSOR—*concluded.*

at least one assessor throughout the trial. This condition not having been fulfilled, the proceedings before the Sessions Court must be set aside as having (with regard to the provisions of s. 268 of the Code of Criminal Procedure) been held before a Court not having jurisdiction. QUEEN-EMPRESS *v.* MUHAMMAD MAHMUD KHAN.

[I. L. R. 13 All. 337

ASSETS.

See COMPANY — WINDING UP — DUTIES AND POWERS OF LIQUIDATORS.

[I. L. R. 18 Calc. 31

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[I. L. R. 18 Calc. 242

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See CONTRACT—CONSTRUCTION OF CONTRACTS.

[I. L. R. 17 Calc. 115

See RIGHT OF SUIT — CONTRACTS OR AGREEMENTS.

[I. L. R. 15 Bom. 1

——, Debt.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R. 15 Mad. 419

——, Equity of Redemption.

See CHAMPERTY.

[I. L. R. 14 Bom. 72

——, Government Revenue.

See MADRAS REVENUE RECOVERY ACT, s. 2.

[I. L. R. 13 Mad. 319

——, Mortgaged Property.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R. 19 Calc. 336

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——, By Debtor after attachment.

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[I. L. R. 16 Bom. 91

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See RIGHT OF SUIT—CONTRACTS OR AGREEMENTS.

[I. L. R. 15 Bom. 1

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See DISTRICT JUDGE, JURISDICTION OF.

[I. L. R. 15 Bom. 107

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[I. L. R. 19 Calc. 651

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[I. L. R. 16 Bom. 455

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[I. L. R. 16 Bom. 577

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[I. L. R. 13 Mad. 366

——, Suit to set aside.

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[I. L. R. 12 All. 209

(1) SUBJECTS OF ATTACHMENT.

(*a*) DEBTS.

1.—*Civil Procedure Code, s.* 268 (*a*)—*Order prohibiting creditor from recovering debt—Limitation Act,* (*XV of* 1877) *s.* 15—*Injunction or order staying a suit.*] S. 268, cl. (*a*) of the Civil Procedure Code, does not mean that, while a debt is under attachment, the person to whom the debt was originally owing, should be barred from bringing a suit in respect of it. What it prohibits is the recovery of the debt, and the payment of it by the debtor to the creditor. *Semble*—An order of attachment under s. 268 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s. 15 of the Limitation Act (XV of 1877). SHIB SINGH *v.* SITA RAM.

[I. L. R. 13 All. 76

(*b*) DECREES.

2.—*Money-decree—"Saleable property"—Civil Procedure Code* (*Act XIV of* 1882). *s.* 266 *and* 273—*Adjustment of decree after attachment.*] The particular procedure prescribed by s. 273 of the Civil

ATTACHMENT—*continued.*

(1) SUBJECTS OF ATTACHMENT—*continued.*

(*b*) DECREES—*concluded.*

Procedure Code (Act XIV of 1882) is clearly confined to money-decrees and therefore, such decrees cannot be sold after being attached; all other decrees are both attachable, and saleable, as "saleable property," under s. 266 of the Code. A decree being attached as directed by s. 273 of the Civil Procedure Code, its adjustment subsequent to such attachment cannot be recognized by the Court. GOPAL NANASHET *v.* JOHARIMAL; DADA BALSHET *v.* JOHARIMAL.

[I. L. R. 16 Bom. 522

3.—*Money-decree—Sale of decree for money—Suit in formâ pauperis—Court-fees recoverable by Government—Civil Procedure Code* (*Act XIV of* 1882), *ss.* 273, 284, 411—*Execution of decree, mode of.*] Where a plaintiff suing *in formâ pauperis* obtained a decree for money, and the Collector, in pursuance of an order made in his favour at the time when such decree was passed, attached it under s. 273 of the Code of Civil Procedure, and subsequently sold the same under s. 284, *held*, upon the application of the decree-holder for execution of his decree, that the provisions of s. 273 did not contemplate the sale of a decree for money, but they showed in what manner the attachment of decrees should be made available on behalf of the attaching person. *Sultan Koer* v. *Gulzari Lal*, I. L. R. 2 All. 290, and *Tirurangada Chari* v. *Vythilinga Pillai*, I. L. R 6 Mad. 418, followed. *Semble*—The provisions of s. 411 of the Code of Civil Procedure do not justify the Court in selling a decree upon the application of the Collector, inasmuch as that section provides that persons who have been successful as paupers shall, so far as the subject-matter of their success is concerned, be liable to satisfy out of what they recover the amount of the fees, which have been for a time, pending the decision of their suit, remitted to them. JOTINDRO NATH CHOWDHURY *v.* DWARKA NATH DEY.

[I. L. R. 20 Calc. 111

(*c*) EXPECTANCY.

4.—*Execution of decree—Civil Procedure Code, s.* 266—*Attachment of future estate—Construction, according to Mahomedan law, of grant of such estate.*] Previously to a mortgage, a fractional interest in certain property (which interest was purchased by the plaintiff, the mortgagee, at a judicial sale) had been the subject of settlement by a Mahomedan on his wife, under the condition that if he should have no child by her, his two sons by another wife should each have an estate therein. He died without other children:—*Held*, that the two sons had taken definite interests capable of being attached, within s. 266 of the Civil Procedure Code, not being mere expectancies. UMES CHUNDER SIRCAR *v.* ZAHUR FATIMA.

[I. L. R. 18 Calc. 164

[L. R. 17 I. A. 201

ATTACHMENT—*continued.*

(1) SUBJECTS OF ATTACHMENT—*continued.*

(*d*) LETTERS IN POST OFFICE.

5.—*Civil Procedure Code*, 1882, *s.* 272—*Post Office Act* (*XIV of* 1866), *s.* 5—*Letters held in trust for judgment-debtor.*] An attachment was placed under Civil Procedure Code, s. 272, on letters in the post office addressed to certain judgment-debtors. The day before the attachment the senders of the letters had applied to have the letters returned to them:—*Held*, that the postmaster held the letters in trust for, or on behalf of, the judgment-debtors, and they were accordingly liable to attachment on the application of the decree-holder. NARASIMHULU *v.* ADIAPPA.

[I. L. R. 13 Mad. 242

(*e*) PARTNERSHIP PROPERTY.

6.—*Right of suit—Civil Procedure Code, s.* 266—*Unascertained interest in a partnership.*] In a suit by the purchaser at an execution-sale of the interest of the judgment-debtor in a partnership, of which the undivided father (deceased) of the judgment-debtor had been a member, against the other partners praying that an account be taken and that the share of the judgment-debtor be paid to him, it was contended that the share in the partnership was not liable to be attached and sold in execution; *held*, that a share in a partnership could be the subject of attachment under s. 266 of the Civil Procedure Code; that the execution-sale was not bad in law; and that the present suit was accordingly maintainable. *Dwarika Mohun Das* v. *Luckhimoni Dasi* (I. L. R. 14 Calc. 384), dissented from. PARVATHEESAM *v.* BAPANNA.

[I. L. R. 13 Mad. 447

7.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 266—*Saleable property—Share of partner in partnership business.*] The share of a partner in a partnership business is "saleable property" within the meaning of those words in s. 266 of the Code of Civil Procedure, and can therefore be attached and sold by an execution-creditor in execution of a decree against that partner. *Dwarika Mohun Das* v. *Luckhimoni Dasi*, I. L. R. 14 Calc. 384; *Tuffuzzul Hossein Khan* v. *Raghu Nath Pershad*, 7 B. L. R. 186; 14 Moo. I. A. 40; *Deendyal Lal* v. *Jugdeep Narain Singh*, I. L. R. 3 Calc. 198; L. R. 4 I. A. 247; and *Parvatheesam* v. *Bapanna*, I. L. R. 13 Mad. 447, referred to. JAGAT CHUNDER ROY. *v.* ISWAR CHUNDER ROY.

[I. L. R. 20 Calc. 693

(*f*) PENSION.

8.—*Civil Procedure Code*, 1882, *s.* 266, *sub-section* (*g*)—*Political pension—Payments due under the Oudh loans of* 1838 *and* 1842—*Exemption from liability to attachment for debt.*] Although it is probable that the enactments of s. 266, Civil Procedure Code, 1882, were not meant to cover pensions payable by a foreign State when remitted for payment to their pensioner in India, they certainly include all pensions of a political nature payable directly by the Government of

ATTACHMENT—*continued.*

(1) SUBJECTS OF ATTACHMENT—*continued.*

(*f*) PENSION—*concluded.*

India. A pension guaranteed payable by the latter by a treaty obligation contracted with another sovereign power is in the strictest sense a political pension. An allowance, payable by the Government of India under an arrangement made between the King of Oudh and the Governor-General in 1842 for the benefit of members of the King's family and household, and their respective heirs in perpetuity, and payable to one of such heirs, who has inherited it, as his share in the interest in the Oudh loan of 1842, is a political pension within the meaning of s. 266, sub-section (*g*), Civil Procedure Code, 1882. The arrangement of 1842 cannot be treated as merely a provision out of the King's private estate for the maintenance of members of his family, there having been in a State like that of Oudh no distinction between State property and private property vested in the sovereign. BISHAMBAR NATH *v.* IMDAD ALI KHAN.

[I. L. R. 18 Calc. 216
[I. L. R. 17 I. A. 181

(*g*) PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.

9.—*Standing crops—Civil Procedure Code, s.* 266—*Immoveable property—General Clauses Consolidation Act* (*I of* 1868)—*Provincial Small Cause Court Act* (*IX of* 1887), *sch. ii, cl.* (6).] Standing crops are immoveable property in the sense of the General Clauses Act (I of 1868), and of cl. (6) of the second schedule of the Small Cause Courts Act (IX of 1887), and of the Civil Procedure Code. They cannot therefore be attached under s. 266 of the Code. *Madayya* v. *Venkata*, I. L. R. 11 Mad. 193, approved. CHEDA LAL *v.* MULCHAND; MINDAI *v.* KUNDAN SINGH.

[I. L. R. 14 All. 30

10.—*Vested remainder—Civil Procedure Code*, 1882, *s.* 266—*Attachable interest.*] The plaintiff sued to have it declared that a certain house was liable to be attached and sold in execution of a decree obtained by him against the defendant's son. The defendant, who was 80 years of age, claimed the house as her absolute property, alleging that her son by a deed had given it to her as a provision for her maintenance. The deed stated that she had been made the owner of the house; that the donor had no right to it, and that it wholly belonged to her:—*Held*, that the plaintiff was entitled to the declaration prayed for. The surrounding circumstances showed that the house was revertible to the donor on the defendant's death. He had what in English law would be termed a vested remainder on her death, and he had, therefore, a saleable interest during her life. He had an interest which could be attached and sold under s. 266 of the Civil Procedure Code (Act XIV of 1882). ANNAJI DATTATRAYA *v.* CHANDRABAI.

[I. L. R. 17 Bom. 503

ATTACHMENT—*continued.*

(1) SUBJECTS OF ATTACHMENT—*concluded.*

(*g*) PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS—*concluded.*

11.—*Property assigned to Hindu widow in lieu of maintenance — Civil Procedure Code, s.* 266, *cl.* 1.] *Held*, that an interest in the income of immoveable property assigned by way of maintenance to a Hindu widow by the members of her family is not capable of being attached and sold in execution of a decree against the widow. *Diwali* v. *Apaji Ganesh*, I. L. R. 10 Bom. 342, referred to. GULAB KUAR *v.* BANSIDHAR.

[I. L. R. 15 All. 371

12.—*Lease—Saleable interest — Alienation by operation of law—Condition restraining alienation —Civil Procedure Code* (*Act XIV of* 1882), *s* 266.] *A* sued to recover possession of certain land which was leased in *osathowla* by his father to *B*. The lease expressly prohibited the lessee and his heir from making any assignment of the property either by sale or gift, but it did not contain any provision for forfeiture or for re-entry by reason of an assignment in violation of its terms, nor was there any provision restricting a sale in execution of a decree. The *osathowla* passed to *B's* executor and was sold in execution of a decree against *B*:—*Held*, the sale passed a good title. *B*, and also his executor at the time of the sale, had an interest in the lease, which was "saleable" within the meaning of s. 266 of the Civil Procedure Code. *Diwali* v. *Apaji Ganesh*, I. L. R. 10 Bom. 342, distinguished. GOLAK NATH ROY CHOWDHRY *v.* MATHURA NATH ROY CHOWDHRY.

[I. L. R. 20 Calc. 273

(2) ATTACHMENT OF PERSON.

13.—*Arrest in execution of decree—Civil Procedure Code* (*Act XIV of* 1882), *s.* 341—*Insolvency proceedings—Protection order, withdrawal of—Re-arrest under same decree.*] The Civil Procedure Code contemplates as immaterial the circumstances under which a judgment-debtor imprisoned in execution of a decree obtains his release from prison, and there is no power in the Court to order the arrest of such judgment-debtor a second time under the same decree. *The Secretary of State for India in Council* v. *Judah*, I. L. R. 12 Calc. 652, followed. IN THE MATTER OF BOLYE CHUND DUTT.

[I. L. R. 20 Calc. 874

(3) MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

14.—*Incorrect description of property sought to be attached—Sale in execution of decree—Subsequent purchase of same property under a decree for pre-emption — Civil Procedure Code, s.* 274.] In execution of a simple money-decree against the holders of a *muafi* interest in a certain village, who did not possess any zamindari interest in that village, an attachment was obtained by the decree-holder in 1884 of "an eight *biswas* zamindari share of *mouza D*," and under that attachment a

ATTACHMENT—*continued.*

(3) MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT—*concluded.*

sale took place in January 1886. Meanwhile in December 1885, a decree for pre-emption in respect of a sale by the judgment-debtors in 1881 of their *muafi* interests in the village, was decreed in favour of persons who were not parties to the litigation in which the attachment of 1884 was effected. The plaintiffs (who were in possession) sued for a declaration of their right to the *muafi* interests as against the auction-purchaser under the sale of January 1886:—*Held*, that the attachment in 1884 was not a good attachment of the *muafi* interests of the judgment-debtors, and the auction-purchaser could not be held to have purchased those *muafi* interests, and the title of the plaintiffs under their pre-emptive decree of December 1885 must prevail. HARGU LAL SINGH *v.* MUHAMMAD RAZA KHAN.

[I. L. R. 13 All. 119

15.—*Civil Procedure Code—Rights and interests of mortgagee out of possession.*] Where the rights and interests under his mortgage of a mortgagee out of possession are attached in execution of a decree, the procedure by which such attachment must be effected is that prescribed by s. 268 of the Code of Civil Procedure. S. 274 of the Code cannot be applied in such a case. KARIM-UN-NISSA *v.* PHUL CHAND.

[I. L. R. 15 All. 134

16.—*Civil Procedure Code, s.* 274, *cl.* (*c*)—*Rights of purchaser of mortgage-bond at sale in execution of decree.*] Where a person at an execution-sale purchases a mortgage-bond under which certain immoveable property is given as collateral security for an advance, the fact that he has not attached under s. 274 of the Code will not affect his right to have the collateral security enforced by the sale of the properties mortgaged. KASINATH DAS *v.* SADASIV PATNAIK.

[I. L. R. 20 Calc. 805

17.—*Attachment of money in hands of Receiver —Attachment made without sanction of Court—Civil Procedure Code* (*Act XIV of* 1882), *s.* 272.] An attachment of money in the hands of the Receiver made without previous permission or sanction of the Court for such attachment is improper and irregular, and the Court will refuse to recognize it. *Kahn* v. *Alli Mahomed Haji Umer*, I. L. R. 16 Bom. 577, followed. MAHOMMED ZOHURUDDEEN *v.* MAHOMMED NOOROODDEEN.

[I. L. R. 21 Calc. 85

(4) ALIENATION DURING ATTACHMENT.

18.—*Madras Abkari Act* (*Madras Act I of* 1865), *s.* 28—*Attachment for arrears of revenue—Subsequent attachment in execution of decree.*] Certain land was put under attachment for arrears of revenue under the Madras Abkari Act, s. 28; the same land was subsequently attached in execution of a money-decree against the defaulter, and the defendant purchased it at the Court-sale. The

ATTACHMENT—*concluded.*

(4) ALIENATION DURING ATTACHMENT—*concluded.*

Collector of the district intervened in execution and objected to the sale of the land in question, but his objection was rejected. A suit was now brought in the name of the Secretary of State for a declaration that the land was liable for the arrears of revenue in respect of which the attachment under Abkari Act had been made:—*Held*, that the plaintiff was entitled to the declaration asked for. SARANGAPANI *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 16 Mad. 479

(5) LIABILITY FOR WRONGFUL ATTACHMENT.

19.—*Claim to attach property—Civil Procedure Code, ss.* 278, 283, 483—*Attachment before judgment—Liability of creditor who caused attachment of goods not belonging to the debtor—Damages after sale—Difference between English and Indian law on the subject.*] Orders for attachment in security under s. 483 of the Civil Procedure Code being issued on the *ex parte* application of the creditor, who is bound to specify the property which he desires to have attached and its estimated value, it follows that the attachment is the direct act of the creditor, for which he is immediately responsible. Should the goods be proved not to belong to the debtor, the litigation and delay, and also any depreciation of the goods by an intermediate fall in the market, between attachment and sale, are the natural and necessary consequences of the creditor's unlawful act. The plaintiff having taken, without success, the summary proceeding under s. 278, to get the release of goods attached under s. 487, in a suit to which he was not a party, afterwards, in a suit brought by him in accordance with s. 283, established his right of property in the goods:—*Held*, that (*a*), in order to entitle him to the full indemnity for the wrongful attachment he was not bound to allege and prove that the defendants had resisted his previous application under s. 278 maliciously, or without probable cause; and that (*b*), the goods having been sold under the Court's order, the difference in market-value of the goods at the time of their attachment (November 1883) and their price when they were sold (June 1884), the selling prices having fallen intermediately, must be added to the damages. *Held* also that, without bringing under review the judgment under s. 278, the effect of the judgment in the suit brought in accordance with s. 283 was to supersede the order under s. 278, and to render it inconclusive. The procedure on attachment not being the same in India as in England, where a judgment-creditor is not responsible for the consequences of a sale, under a judicial order, of goods taken in execution in satisfaction of his debt, that proposition does not hold good under the Indian procedure; and *Walker* v. *Olding*, 1 H. & C. 621; 9 Jur. N. S. 53; 32 L. J. Exch. 142; is inapplicable to the latter. KISSORIMOHUN ROY *v.* HARSUKH DAS.

[I. L. R. 17 Calc. 436

[L. R. 17 I. A. 17

ATTAINDER, LAW OF.

See ENGLISH LAW.

[I. L. R. 16 Mad. 384

ATTEMPT TO COMMIT OFFENCE.

1.—*Penal Code, ss.* 307, 511—*Attempt to murder—Murder.*] The accused struck the deceased three blows on the head with a stick, with the intention of killing him. The deceased fell down senseless on the ground. The accused, believing that he was dead, set fire to the hut in which he was lying with a view to remove all evidence of the crime. The medical evidence showed that the blows struck by the accused were not likely to cause death, and did not cause death, and that death was really caused by injuries from burning when the accused set fire to the hut:—*Held* (PARSONS, J., dissenting) that the accused was guilty of attempt to murder under s. 307 of the Penal Code. *Per* PARSONS, J.:—The accused was guilty of murder under s. 302 of the Penal Code. QUEEN-EMPRESS *v.* KHANDU.

[I. L. R. 15 Bom. 194

2.—*Penal Code, ss.* 307, 511—*Attempt to commit murder — Facts necessary to constitute such attempt.*] S. 511 of the Penal Code does not apply to attempts to commit murder, which are fully and exclusively provided for by s. 307 of the said Code. A person is criminally responsible for an attempt to commit murder when, with the intention or knowledge requisite to its commission, he has done the last proximate act necessary to constitute the completed offence, and when the completion of the offence is only prevented by some cause independent of his volition. QUEEN-EMPRESS *v.* NIDDHA.

[I. L. R. 14 All. 38

3.—*Penal Code, s.* 511—*Acts necessary to constitute an attempt.*] S. 511 of the Penal Code was not meant to cover only the penultimate act towards completion of an offence and not acts precedent, if those acts are done in the course of the attempt to commit the offence, are done with the intent to commit it, and done towards its commission. Whether any given act or series of acts amounts to an attempt of which the law will take notice, or merely to preparation, is a question of fact in each case. IN THE MATTER OF THE PETITION OF MACCREA.

[I. L. R. 15 All. 173

ATTESTATION.

See WILL—ATTESTATION.

[I. L. R. 15 Mad. 261

ATTORNEY.

——, Change of, pending suit.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

[I. L. R. 19 Calc. 368

——, Lien of, for costs.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

[I. L. R. 19 Calc. 368

ATTORNEY—*concluded.*

—— and Client.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.
[I. L. R. 19 Calc. 368
[I. L. R. 21 Calc. 85

See EXECUTION OF DECREE—MODE OF EXECUTION—COSTS.
[I. L. R. 17 Bom. 514

See RULES OF HIGH COURT, BOMBAY—RULE No. 183.
[I. L. R. 16 Bom. 152

AUTREFOIS CONVICT.

See ACT XIII OF 1859.
[I. L. R. 21 Calc. 262

AWARD.

See CASES UNDER ARBITRATION.

See WILL—VALIDITY OF WILL.
[I. L. R. 15 Bom. 697

——, Agreement to partition in accordance with.

See STAMP ACT, 1879, s. 3.
[I. L. R. 15 Bom. 677

——, Application to file.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R. 15 Bom. 240

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.
[I. L. R 19 Calc. 334

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—AWARDS.
[I. L. R. 13 Mad. 344

——, Decree in accordance with.

See APPEAL—ARBITRATION.
[I. L. R. 15 Mad. 348
[I. L. R. 13 All. 366

See DECREE—ALTERATION OR AMENDMENT OF DECREE.
[I. L. R. 17 Bom. 657

——, Finality of.

See PANCHAYET.
[I. L. R. 15 Mad. 1

——, Of Commissioners.

See NAWAB NAZIM'S DEBTS ACT.
[I. L. R. 19 Calc. 584

AWARD—*concluded.*

——, Refusal to file—

See RES JUDICATA—ADJUDICATIONS.
[I. L. R. 18 Calc. 414

——, Suit on—

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS.
[I. L. R. 15 Mad. 99

See RIGHT OF SUIT—AWARDS.
[I. L. R. 15 Mad. 99

——, Suit to recover money under.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—AWARDS.
[I. L. R. 13 Mad. 344

BAIL.

See ARREST—CRIMINAL ARREST.
[I. L. R. 14 All. 45

——, On arrest of ship.

See COSTS—SPECIAL CASES—ADMIRALTY AND VICE-ADMIRALTY.
[I. L. R. 17 Calc. 84

See SALVAGE.
[I. L. R. 17 Calc. 84

——, Petition for.

See PRACTICE—CRIMINAL CASES—PETITION FOR BAIL.
[I. L. R. 15 Bom. 488

—*Insolvent convicted and sentenced to imprisonment under s.* 50 *of the Insolvent Act* (*Stat.* 11 *and* 12 *Vic., c.* 21)—*Appeal by insolvent under s.* 73—*Power of High Court to admit insolvent to bail pending appeal.*] An insolvent was convicted by the Insolvent Court of an offence under s. 50 of the Indian Insolvent Act (Stat. 11 and 12 Vic., c. 21), and sentenced to imprisonment. Under s. 73 of the Act he appealed against the decision and sentence of the Insolvent Court and applied to be admitted to bail pending the hearing of his appeal:—*Held*, refusing the application, that the High Court had no power to admit him to bail. IN THE MATTER OF HORMARJI ARDESIR HORMARJI.
[I. L. R. 17 Bom. 334

BAILEES.

See CARRIERS.
[I. L. R. 18 Calc. 520

See RAILWAY COMPANY.
[I. L. R. 17 Bom. 723

BANDHUS.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—FATHER'S SISTER.
[I. L. R. 13 Mad. 10

BANIAN OF FIRM.

See LIEN.

[I. L. R. 18 Calc. 573

BANKER AND CUSTOMER.

—*Payment of cheque—Evidence.*] Case in which it was held on the evidence that the respondent Bank had, on the presentation by the appellants' servant of a cheque drawn upon it in favour of the appellants, failed to pay the same in such manner as to be discharged of its obligation. LALL CHAND *v.* AGRA BANK.

[L. R. 18 I. A. 111

BANKRUPTCY IN MAURITIUS.

See DEBTOR AND CREDITOR.

[I. L. R. 16 Mad. 85

BASTI LAND.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 2.

[I. L. R. 21 Calc. 528

BENAMI TRANSACTION.

	Col.
1. General Cases	75
2. Certified Purchasers	76

(1) GENERAL CASES.

1.—*Purchaser at execution-sale—Representative—Mortgage by alleged benamidar—Evidence Act (I of 1872), s. 115—Onus of proof.*] *E*, being in possession of the documents of title, mortgaged land to the plaintiff. *E* and his father *A* borrowed money from one *R*, who obtained a decree against *A*, and purchased the land at the execution-sale In a suit for foreclosure of the plaintiff's mortgage against *E* and *R*, the lower Courts held that *A* was the true owner, but the lower Appellate Court did not decide whether the plaintiff's mortgage was a valid transaction:—*Held*, on second appeal, that *R* acquired the property adversely to *A* and not as his representative, and that there was no estoppel against him. *Dinendranath Sannial* v. *Ramkumar Ghose*, I. L. R. 7 Calc. 107; L. R 8 I. A. 65; and *Lala Parbhu Lal* v. *Mylne*, I. L. R. 14 Calc. 401, followed. *Held*, further, that it was not necessary to decide whether the plaintiff's mortgage was valid as against *A*, the plaintiff not having raised the question in the lower Courts, but that, assuming the mortgage to be valid, the *onus* did not lie upon *R* to prove that the mortgage was not binding upon *A*. *Bhugwan Doss* v. *Upooch Singh*, 10 W. R. 185, observed upon. BASHI CHUNDER SEN *v.* ENAYET ALI.

[I. L. R. 20 Calc. 236

2.—*Benami purchase—Alienation by benamidar—Consent of true owner - Equitable rights of purchaser.*] Where a *benamidar* purchased property with moneys borrowed from the plaintiff, and afterwards mortgaged the purchased property to the plaintiff to secure the debt, the plaintiff being aware of the *benami* character of the title, and the real purchaser being cognizant of the mortgage, *held*, in a suit against the *benamidar* and the beneficial owner, that even if the mortgagor had not created a valid hypothecation of the property, still the plaintiff was entitled in equity to a declaration that the sums advanced with interest were a charge thereon. SARJU PARSHAD *v.* BIR BHADDAR SEWAK PANDAY.

[L. R. 20 I. A. 108

(2) CERTIFIED PURCHASERS.

3.—*Civil Procedure Code, s. 317—Suit by purchaser at sale in execution of decree.*] At a sale in execution of a decree, in February 1875, the plaintiff purchased certain property in the name of *M*, who was recorded as the purchaser. In 1886, eleven years after the execution-sale, *M* sold the property to *H*, whose name was subsequently registered as owner, notwithstanding the plaintiff's objections. The plaintiff thereupon, in 1888, brought a suit against *H* for a declaration of his title to the property, on the grounds that it had originally been purchased on his behalf at the execution-sale, and that he had been in possession for more than twelve years:—*Held*, that the suit did not fall within s. 317 of the Civil Procedure Code. *Buhuns Koonwur* v. *Lalla Buhoree Lall*, 10 B. L. R. 159; 14 Moo. I A. 496, relied on. KARAMUDDIN HOSAIN *v.* NIAMUT FATEHMA.

[I. L. R. 19 Calc. 199

4.—*Civil Procedure Code, s. 317—Benami purchase at execution-sale for judgment-debtor—Remedy of subsequent purchaser for value—Misjoinder of parties.*] In a suit to redeem a *kanom* brought by the plaintiff who had purchased the land in execution of a decree against the *jenmi*, it appeared that the land had previously been purchased in the name of one who was joined as a supplementary defendant, with the funds of the *jenmi's tarwad*, and with the object of defrauding the creditors of that *tarwad* A decree for redemption was passed, which was reversed on appeals filed by the supplementary defendant and the *kanomdar* respectively. The plaintiff preferred a second appeal against the decree in the first-mentioned appeal, joining the *kanomdar* as respondent:—*Held* that the plaintiffs could not succeed, as the *kanomdar* was not a party to the appeal against which the second appeal was preferred. *Semble*, apart from the above objection, the plaintiff was not entitled to a declaration that the purchase by the supplementary defendant was *benami* for the *tarwad* of the original *jenmi* and consequently invalid as against the plaintiff. *Kanizak Sukina* v. *Monohur Das*, I. L. R. 12 Calc. 204, dissented from. RAMA KURUP *v.* SRIDEVI.

[I. L. R. 16 Mad. 290

5.—*Civil Procedure Code, 1882, s. 317—Suit by execution-creditor for declaration that property is liable to be sold in execution of decree as belonging to his debtor.*] The plaintiff lent money to *F* on a bond, and after his death sued his representative to recover the money out of the deceased's assets, and obtained a decree, in execution of which he

BENAMI TRANSACTION—*concluded.*

(2) CERTIFIED PURCHASERS—*concluded.*

attached certain property. *S* preferred a claim to the property on the ground that she was the purchaser of it at an execution-sale, and it was released. The plaintiff then brought a suit against *S* and *F*'s representative for a declaration that the property was the property of his debtor *F*, and was therefore liable to be sold in execution of his decree:—*Held*, that the suit was not barred by s. 317 of the Civil Procedure Code. *Kanizak Sukina* v. *Monohur Das*, I. L. R. 12 Calc. 204; *Seetanath Ghose* v. *Madhub Narain Roy Chowdhry*, 1 W. R. 329; *Khyrat Ali* v. *Syfulluh Khan*, 8 W. R. 130; *Sohun Lall* v. *Lala Gya Pershad*, 6 N. W. 265; and *Puran Mal* v. *Ali Khan*, I. L. R. 1 All. 235, followed; *Rama Kurup* v. *Sridevi*, I. L. R. 16 Mad. 290, dissented from. SUBHA BIBI *v.* HARA LAL DAS.

[I. L. R. 21 Calc. 519

6.—*Act XI of* 1859, *s.* 36—*Suit to oust certified purchaser.*] *A* purchased a *mehal* in the name of *B*'s brother and obtained possession. He then sued *B*, who was acting as his *tehsildar*, for an account and for delivery of certain papers connected with that *mehal*:—*Held*, that the terms of s. 36 of Act XI of 1859 did not apply to bar the suit. BRINDABUN CHUNDER NUNDI *v.* RAM SUNDER MOZUMDAR.

[I. L. R. 21 Calc. 375

BENAMIDAR.

See CASES UNDER BENAMI TRANSACTION.

See BENGAL TENANCY ACT, s. 173.

[I. L. R. 21 Calc. 554

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—GENERALLY.

[I. L. R. 20 Calc. 388

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES.

[I. L. R. 15 Mad. 267

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R. 20 Calc. 418

——, Property held by, evidence as to ownership of.

See LIMITATION ACT, 1877, ART. 142.

[I. L. R. 20 Calc. 560

BENCH OF MAGISTRATES.

1.—*Jurisdiction—Criminal Procedure Code*, 1882, *s.* 261—*Madras Police Act* (*XXIV of* 1859), *s.* 48—*Offences against "Conservancy clauses"—Obstruction to, and nuisance in, road.*] Offences under the Madras Police Act, s. 48, are within the cognizance of a Bench of Magistrates. QUEEN-EMPRESS *v.* OOLAGANADAN.

[I. L. R. 13 Mad. 142

BENCH OF MAGISTRATES—*concluded.*

2.—*Criminal Procedure Code* (*Act X of* 1882), *ss.* 15, 16—*Constitution of the Bench under the rules of the Government of Madras.*] The accused was tried on a charge under the Penal Code, s. 352 by a Bench of Magistrates, consisting of a pensioned District Munsif who had been appointed Chairman of the Bench and one Special Magistrate. The Magistrates differed in opinion, but the Chairman gave his casting vote for conviction, and the accused was convicted and sentenced:—*Held*, that the Court was not legally constituted under the rules of the Government of Madras, and the conviction should be set aside. QUEEN-EMPRESS *v.* MUTHIA.

[I. L. R. 16 Mad. 410

3.—*Absence of member of Bench—Hearing of part of case by one Bench of Magistrates, and decision by another—Criminal Procedure Code*, 1882, *ss.* 16, 350—*Rules framed by Local Government for the guidance of Benches of Magistrates under s.* 16, *Criminal Procedure Code—Ultra vires.*] Rule 8 of the rules framed by the Local Government for the guidance of Benches of Magistrates is *ultra vires*. An Honorary Magistrate may not give judgment and pass sentence in a case unless he has been a member of the Bench during the whole of the hearing of the case. HARDWAR SING *v.* KHEGA OJHA.

[I. L. R. 20 Calc. 870

BENGAL ACT, 1862—VI.

——, s. 20.—*Suit for account and for money misappropriated by agent—Cause of action—Bengal Act I of* 1879, *s.* 146—*Agency, creation of.*] Where an agency for the collection of rents of *tokes G* and *H* was created in district *M*, in which district *toke G* was situated, *toke H* being situated in district *L*, *held*, in a suit brought against the agent for an account and for money fraudulently misappropriated, and instituted in district *M*, that, so far as the suit related to *toke H*, the Court of *M* had no jurisdiction to try it. Bengal Act VI of 1862 requires a suit to be brought in some Court within the district in which the land lies in respect of which the agency was created, and the question where the cause of action arose is material only in determining in which sub-division of the district the suit is to be brought. NILMONI SINGH DEO *v.* NILU NAIK.

[I. L. R. 20 Calc. 425

——, 1866—IV.

See CALCUTTA POLICE ACT, 1866.

——, 1868—VII.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.

[I. L. R. 21 Calc. 70

——, s. 8.

See PUBLIC DEMANDS RECOVERY ACT, s. 2.

[I. L. R. 21 Calc. 350

BENGAL ACT, 1868—VII—*concluded.*

——, s. 11.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R. 18 Calc. 125

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.

[I. L. R. 21 Calc. 360

——, 1869—II.

See CHOTA NAGPORE TENURES ACT.

——, 1869—VIII.

See BENGAL RENT ACT, 1869.

See LIMITATION ACT, 1877, s. 7.

[I. L. R. 17 Calc. 263

——, 1876—I.

See CHEATING.

[I. L. R. 17 Calc. 606

——, 1876—IV.

See CALCUTTA MUNICIPAL ACT, 1876.

——, 1876—VII.

See LAND REGISTRATION ACT (BENGAL).

——, 1876—VIII, s. 128.

See PARTITION—PRIVATE PARTITION.

[I. L. R. 20 Calc. 285

——, 1878—VII.

See BENGAL EXCISE ACT.

——, 1879—I, s. 146.

See BENGAL ACT VI OF 1862, s. 20.

[I. L. R. 20 Calc. 425

——, 1879—IX.

See COURT OF WARDS ACT.

——, 1880—VII.

See PUBLIC DEMANDS RECOVERY ACT.

——, 1880—IX.

See BENGAL CESS ACT, 1880.

——, 1884—III.

See BENGAL MUNICIPAL ACT, 1884.

——, 1888—II.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888.

BENGAL CESS ACT (BENGAL ACT IX OF 1880).

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—OTHER GROUNDS.

[I. L. R. 21 Calc. 70

BENGAL CESS ACT (BENGAL ACT IX OF 1880)—*concluded.*

——, s. 47.

See APPEAL—ACTS—BENGAL TENANCY ACT, s. 153.

[I. L. R. 20 Calc. 254

——, ss 98, 99.

See CESS.

[I. L. R. 19 Calc. 783

BENGAL CIVIL COURTS ACT (VI OF 1871), s. 18.

See SUBORDINATE JUDGE, JURISDICTION OF.

[I. L. R. 18 Calc. 526

——, s. 20.

See VALUATION OF SUIT—SUITS.

[I. L. R. 12 All. 506

BENGAL EXCISE ACT (BENGAL ACT VII OF 1878).

——, s. 53—*Sale by servant of licensed vendor in presence of master—Liability of servant.*] The accused, who was the servant of a licensed retail vendor of spirituous and fermented liquors under Bengal Act VII of 1878, was convicted of an offence under s. 53 of that Act for selling excisable liquor without a license. The sale charged against him was of a quantity of *puchwai* in excess of that allowed to be sold under the license of his master. The sale was made in the presence of the master, the licensee, the accused merely handing the liquor to the purchaser at his master's request:—*Held*, that the conviction was bad, as the facts did not establish a *sale* by the accused, the mere mechanical act of handing the liquor to the purchaser not constituting a *sale* by the accused. QUEEN-EMPRESS *v.* HARRIDAS SAN.

[I. L. R. 17 Calc. 566

BENGAL MUNICIPAL ACT (BENGAL ACT III OF 1864).

——, s. 10—*Public highways—Roads vesting in Commissioners—Subsoil of roads, right to—Civil Procedure Code (Act XIV of* 1882), *s.* 13—*Res judicata.*] S. 10 of Bengal Act III of 1864 does not deprive a person of any right of private property that he may have in land used as a public road, nor does it vest the subsoil of such land in a municipality; and when such land is no longer required as a public road, the owner is entitled to claim its possession. A decision in a suit brought by the plaintiffs' predecessor in title to recover certain land from a municipality, which had been taken up as a public road and vested in the municipality subsequently under Bengal Act III of 1864, s. 10, on the ground that the plaintiffs had been ousted therefrom by reason of the municipality stacking stones on a portion thereof, having been dismissed, held not to be *res judicata* in a suit brought by the plaintiffs for ejectment and declaration of title to such land against a purchaser of the land from the municipality. MODHU SUDAN KUNDU *v.* PROMODA NATH ROY.

[I. L. R. 20 Calc. 732

BENGAL MUNICIPAL ACT (BENGAL ACT V OF 1876), s. 234.

See BENGAL MUNICIPAL ACT, 1884, s 2.

[I. L. R. 20 Calc. 699

BENGAL MUNICIPAL ACT (BENGAL ACT III OF 1884).

———, s. 2.—*"Notification," meaning of—"Order" under Bengal Act V of 1876, s. 234—Extension of Municipal Act to Balasore—Order notified.*] The word "notification" in s. 2, Bengal Act III of 1884 includes an order made under s. 234 of Bengal Act V of 1876. An order, therefore, made and notified under s. 234 of Bengal Act V of 1876 extending the provisions of Chapter VII of the Act, is, under the provisions of s. 2 of Bengal Act III of 1884, to be deemed to have been made and notified under the provisions of the Act of 1884. BAIKANTHA NATH DAS *v.* LOLIT MOHUN SARKAR.

[I. L. R. 20 Calc. 699

———, s. 45, and s. 353.—*Powers of Chairman, delegation of—Prosecution for obstructing drain.*] The proviso to s. 45 of the Bengal Municipal Act, 1884, cannot be considered as altogether overriding the body of the section, and relates only to specific acts in which an express or implied consent may have been given or held to have been given. It cannot be held to apply to a general authority, verbally given by a Chairman to a Vice-Chairman, to institute prosecutions under the Act, as such power can only, under the body of the section, be delegated by a written order. In a prosecution instituted by a Vice-Chairman for obstructing a drain, where it appeared that the Chairman had some months previously verbally given the Vice-Chairman general authority to institute all such prosecutions under s. 353 of the Act, and it appeared that a conviction had been obtained before a Bench of Magistrates, and that on appeal to the Magistrate the conviction had been upheld, the Magistrate himself being the Chairman and hearing the appeal with the express consent of the accused, and where it was contended in revision before the High Court that although there was no written order by the Chairman delegating his powers, it must be taken upon the facts proved and the circumstances of the case that the prosecution had been instituted with the express or implied consent of the Chairman obtained, both previously and subsequently, within the terms of the proviso to s. 45:—*Held*, that the proviso did not apply to the case, that the prosecution had not been properly instituted, and that the conviction and sentence must be set aside. KHERODA PROSAD PAUL *v.* CHAIRMAN OF THE HOWRAH MUNICIPALITY.

[I. L. R. 20 Calc. 448

———, ss. 113, 116.—*Persons occupying holdings—Liability to assessment—Municipal Commissioners, power to tax—Assessment to tax.*] The word "liability" in the 2nd paragraph of s. 113 of Bengal Act III of 1884 means liability apart from the question of occupation, and must be taken to refer to the liability to assessment or rating of a person who is the occupier of a holding. The same restricted meaning must be placed upon the word "liability" in s. 116, which section has no application to a dispute as to whether a person assessed to a tax does or does not occupy a holding; and a suit brought to set aside an assessment on the ground that the person assessed does not occupy a holding is not therefore barred by the provisions of s. 116. DWARKA NATH DUTT *v.* ADDYA SUNDARI MITTRA.

BENGAL MUNICIPAL ACT (BENGAL ACT III OF 1884), ss 113, 116—*continued.*

[I. L. R. 21 Calc. 319

———, s. 217.—*Obstructing road not vested in Municipality over which public have a right of way—Road.*] The term "road" in cl. 5 of s. 217 of Bengal Act III of 1884 is not limited to roads vested in the Municipal Commissioners. A person was charged at the instance of a municipality under that clause with obstructing a path through his paddy-field by erecting a fence at either end of it. It was found that the public had a right of way over the path, and the lower Courts convicted the accused of an offence under that clause. In revision it was contended that the conviction was bad, as the clause could only refer to a road which had vested in the Municipal Commissioners:—*Held*, for the above reasons, that the conviction was right and must be upheld. RAM CHANDRA GHOSE *v.* BALLY MUNICIPALITY.

[I. L. R. 17 Calc. 684

———, s. 337 and ss. 338, 339, 344.—*License for a provision market—Market—Order prohibiting use of unlicensed market—Powers of Municipal Commissioners to grant or withhold licenses.*] It is entirely within the discretion of the Municipal Commissioners, under the provisions of s. 339 of the Bengal Municipal Act (Bengal Act III of 1884), to grant or refuse a license for a market, and the Courts have no longer any jurisdiction to control such power, however arbitrarily exercised. *Moran* v. *Chairman of the Motihari Municipality*, I. L. R. 17 Calc. 329, approved. A land-owner on whose land a market had been held for some years previous, and which land lay within the bounds of a municipality, was prosecuted under s. 344 of the Bengal Municipal Act, and convicted and fined for using such market without having obtained a license under s. 338. He alleged that he had applied for a license, and that it had not been granted him, and that the neglect to grant it was due to the fact that his market interfered with a new market established by the Municipal Commissioners, and their desire to close his market. It appeared that some time previous to the institution of the prosecution, the Municipal Commissioners at a meeting passed a resolution "that the provisions of s. 337 of the Municipal Act (Bengal Act III of 1884) be extended to this municipality," and it was contended that by this resolution licenses became necessary to sell at any market any of the provisions mentioned in that section, and that selling without such license rendered the accused liable to prosecution and fine under s. 344. It appeared, further, that

BENGAL MUNICIPAL ACT (BENGAL ACT III OF 1884), s. 337 and ss. 338, 339, 344—*concluded.*

Part X of the Act, which includes s. 337, had been previously extended to the municipality by an order of the Government of Bengal:—*Held*, that the resolution of the Commissioners was not an order such as is contemplated by s 337, as it was not sufficiently precise to convey any definite meaning, and purported only to do what the Bengal Government had already done some time previously. *Held*, further, that the conviction and sentence must be set aside, there being no proper order under s. 337. QUEEN-EMPRESS *v.* MUKUNDA CHUNDER CHATTERJEE.

[I. L. R. 20 Calc. 654

———, s. 339.—*Obligation of municipality to grant license—Interpretation of statute—"May," "shall."*] There are no words which render it obligatory on a municipality to grant a license under s. 339 of Bengal Act III of 1884. The word "may" in s. 339 of that Act is not to be construed as "shall." MORAN *v.* CHAIRMAN OF THE MOTIHARI MUNICIPALITY.

[I. L. R. 17 Calc. 329

BENGAL, N.-W. PROVINCES, AND ASSAM CIVIL COURTS ACT (XII OF 1887).

See SONTHAL PERGUNNAHS SETTLEMENT.

[I. L. R. 18 Calc. 133

———, s. 20.

See APPEAL—DECREES.

[I. L. R. 19 Calc. 275

———, s. 21.

See APPEAL—RECEIVERS.

[I. L. R. 17 Calc. 680

See VALUATION OF SUIT—APPEALS.

[I. L. R. 13 All. 320

See VALUATION OF SUIT—SUITS.

[I. L. R. 17 Calc. 680, 704

———, ss. 23 and 24.

See DISTRICT JUDGE, JURISDICTION OF

[I. L. R. 13 All. 78

———, s. 37.

See MAHOMEDAN LAW—PRE-EMPTION—PROFITS AFTER SALE.

[I. L. R. 12 All. 234

BENGAL REGULATION.

———, 1793—VIII, ss. 54, 55 & 61.

See CESS.

[I. L. R. 17 Calc. 131, 726

———, 1793—XXVII.

See MUNSIF, JURISDICTION OF.

[I. L. R. 19 Calc. 8

BENGAL REGULATION—*continued.*

———, 1793—XXVII—*concluded.*

See SETTLEMENT — CONSTRUCTION OF SETTLEMENT.

[I. L. R. 17 Calc. 458

———, 1793—XXXVIII.

See GRANT—CONSTRUCTION OF GRANT.

[I. L. R. 15 Bom. 222

———, 1806—XVII—s. 7.

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 14 All. 405

See LIMITATION ACT, 1877, ART. 132.

[I. L. R. 20 Calc. 269

———, s. 8.

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 14 All. 405

See LIMITATION ACT, 1877. ART, 132.

[I. L. R. 20 Calc. 269

See MORTGAGE — FORECLOSURE — DEMAND AND NOTICE OF FORECLOSURE.

[I. L. R. 12 All. 189

———, 1810—XIX.

See ACT XX OF 1863.

[I. L. R. 19 Calc. 275

———, 1812—V, ss. 2, 3.

See CESS.

[I. L. R. 17 Calc. 726

———, 1817—XII—s. 16.

See EVIDENCE ACT, s. 74.

[I. L. R. 18 Calc. 534

———, 1819—VIII.

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.

[I. L. R. 19 Calc. 787

See CASES UNDER SALE FOR ARREARS OF RENT.

—Suit for Rent—Putni tenure, transfer of, by sale —Bengal Tenancy Act (VIII of 1885), s. 195 (e).] Regulation VIII of 1819 is not affected by the Bengal Tenancy Act of 1885; the Regulation being specially saved from its operation by s. 195 (*e*) of that Act. GYANADA KANTHO ROY BAHADUR *v.* BROMOMOYI DASSI.

[I. L. R. 17 Calc. 162

———, s. 5.

See BENGAL TENANCY ACT, s. 15.

[I. L. R. 19 Calc. 504

BENGAL REGULATION—*concluded.*

——, 1819—VIII, s. 8.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[I. L. R. 20 Calc. 86

——, 1825—XI.

See SETTLEMENT—EFFECT OF SETTLEMENT.

[I. L. R. 20 Calc. 732

——, s. 4, cl. 1.

See LANDLORD AND TENANT—ACCRETION TO TENURE.

[I. L. R. 21 Calc. 233

BENGAL RENT ACT (X OF 1859).

See LIMITATION ACT, 1877, s. 14.

[I. L. R. 18 Calc. 368

See WITHDRAWAL OF SUIT—SUITS.

[I. L. R. 21 Calc. 428, 514

——, ss. 6 and 7.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT.

[I. L. R. 18 Calc. 349

——, (BENGAL ACT VIII OF 1869).

See LIMITATION ACT, 1877, s. 7.

[I. L. R. 17 Calc. 263

See RIGHT OF OCCUPANCY — LOSS OR FORFEITURE OF RIGHT.

[I. L. R. 21 Calc. 129

——, ss. 6 and 7.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT.

[I. L. R. 18 Calc. 349

——, s. 31, and ss 46, 47—*Limitation—Deposit of rent—Suit for enhancement of rent.*] To bring into operation the special limitation enacted in s. 31 of Bengal Act VIII of 1869, where deposit had been made under s. 46, the deposit could only have been effectively made of rent that had accrued due before the date of such deposit. SURJA KANT ACHARYA *v.* HEMANTA KUMARI.

[I. L. R. 20 Calc. 498

[L. R. 20 I. A. 25

BENGAL TENANCY ACT (VIII OF 1885).

See CASES UNDER APPEAL—ACTS—BENGAL TENANCY ACT.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

[I. L. R. 20 Calc. 590

BENGAL TENANCY ACT (VIII OF 1885) —*continued.*

——, s. 3, cls. (3) and (5) and ss. 4 and 5, cls. (2) and (3)—*Liability to ejectment—Non-occupancy ryots—"Rent"—Payment for "use and occupation."*] The defendants were cultivating ryots who had held certain land under Government, but not for a period sufficient to give them a right of occupancy. The plaintiffs in a suit against the Government succeeded in proving their title to the land. In a suit to eject the defendants as trespassers, inasmuch as they could have derived no title from Government who themselves had no title, and no relationship of landlord and tenant existed between them and the plaintiffs who had not recognised their right to cultivate the land:—*Held*, that, under s. 3, cls. (3) and (5), ss. 4 and 5, cls. (2) and (3), of the Bengal Tenancy Act, the defendants were "non-occupancy ryots," and therefore not liable to ejectment except for the reasons and on the conditions specified in that Act; and no such reasons or conditions existed in this case. Liability to pay for the "use and occupation" of land by a person between whom and the proprietor of such land there exists no relationship of landlord and tenant, is a "liability to pay rent" within the meaning of s. 3, cl. (5), of the Bengal Tenancy Act. Cl. (3), s. 5 of that, Act is intended merely to define the position of a ryot in respect to a proprietor or tenure-holder, and to distinguish him from what is afterwards described as an under-ryot. MOHIMA CHUNDER SHAH *v.* HAZARI PRAMANIK.

[I. L. R. 17 Calc. 45

——; s. 3, cl. (5).

See CESS.

[I. L. R. 17 Calc. 726

——, s. 5.

See s. 3.

[I. L. R. 17 Calc. 45

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 19 Calc. 790

1.—s. 5, cl. (2)—*Ryot, definition of—Person taking land for horticultural purposes.*] *Semble*—The definition of "ryot" in the Bengal Tenancy Act (Act VIII of 1885) is not exhaustive, and there is nothing in that definition which would exclude a person who had taken land for horticultural purposes. HURRY RAM *v.* NURSINGH LAL.

[I. L. R. 21 Calc. 129

2.—s. 5, cl. (2)—*Non-occupancy ryot—Ejectment—Trespasser.*] A person having previously to the passing of the Bengal Tenancy Act, been settled on certain land as a ryot and tenant by a trespasser, and having acquired no right of occupancy at the time of suit brought, was in 1888 sued in ejectment by the true owner, who had obtained possession of the land from such trespasser through the Court on the 27th January 1886:—*Held*, that such person was a non-occupancy ryot within the meaning of s. 5, subsection 2 of the Bengal Tenancy Act, and was

BENGAL TENANCY ACT (VIII OF 1885), s. 5, cl. (2)—*continued.*

protected from ejectment by that Act. *Mohima Chunder Shah* v. *Hazari Pramanik*, I. L. R. 17 Calc. 45, approved. BINAD LAL PAKRASHI *v.* KALU PRAMANIK

[I. L. R. 20 Calc. 708

1.—s. 12.—*Transfer of tenure — Registration — Notice of transfer — Landlord and tenant—Liability for rent.*] After a recorded tenant has transferred his tenure to another person, and that transfer has been duly registered under the provisions of the Bengal Tenancy Act, he is no longer liable for the rent of the tenure, although the landlord may not have received actual notice of such transfer. *Kristo Bulluv Ghose* v. *Kristo Lal Singh*, I. L. R. 16 Calc. 612, relied on. CHINTAMONI DUTT *v.* RASH BEHARI MONDUL

[I. L. R. 19 Calc. 17

2.—s. 12—*Transfer of tenure — Contract regarding transfer of tenure—Conditional transfer—Condition not performed.*] A transfer of a tenure made in terms of the provisions of the Bengal Tenancy Act of 1885 is not binding on the landlord if there be a contract between the landlord and the tenant that the transfer shall not be valid and binding until security to the satisfaction of the landlord has been furnished by the transferee, and such security has not been furnished. The tenant is still liable for the rent. DINOBUNDHU ROY *v.* BONERJEE.

[I. L. R. 19 Calc. 774

———, s. 13.

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[I. L. R. 20 Calc. 247

———, s. 13 and s. 195 (e).—*Sale in execution of decree for arrears of rent—Dur-putni tenures.*] S. 13 of the Bengal Tenancy Act applies to sales of *dur-putni* tenures in execution of decrees. MAHOMED ABBAS MONDUL *v.* BROJO SUNDARI DEBIA.

[I. L. R. 18 Calc. 360

———, s. 15, and ss 16 and 195.—*Putni tenure—Bengal Regulation VIII of* 1819, *s.* 5.] Ss. 15 and 16 of the Bengal Tenancy Act of 1885 apply to *putni* tenures. DURGA PROSAD BUNDOPADHYA *v.* BRINDABUN ROY.

[I. L. R. 19 Calc. 504

———, s. 16.

See s 15.

[I. L. R. 19 Calc. 504

———, ss. 17 and 18.

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[I. L. R. 21 Calc. 433

———, s. 19.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[I. L. R. 21 Calc. 129

BENGAL TENANCY ACT (VIII OF 1885), s. 22—*continued.*

See RIGHT OF OCCUPANCY — LOSS OR FORFEITURE OF RIGHT.

[I. L. R. 18 Calc. 121

———, s. 26.

See LANDLORD AND TENANT— LIABILITY FOR RENT.

[I. L. R. 19 Calc. 790

———, s. 29, cl. (b).—*Enhancement of rent by contract—Agreement not within the section.*] An agreement embodied in a *kabuliat* to pay a certain amount of rent agreed upon by the parties in settlement of differences between them as to what had been the amount and character of the rent, and to avoid further litigation, is not an agreement to enhance within the meaning of s. 21, cl. (*b*) of the Bengal Tenancy Act. SHEO SAHOY PANDAY *v.* RAM RACHIA ROY.

[I. L. R. 18 Calc. 333

———, s. 38.

See s. 104.

[I. L. R. 20 Calc. 579

———, s. 38.—*Settlement of rent—Grounds for abatement of rent—Permanent and temporary deterioration.*] A liberal interpretation should be put upon the word "permanently" in s. 38, sub-section 1, cl. (*a*), and the word construed with reference to existing conditions. It cannot be said that a deterioration is not permanent, only because by the application of capital and skill it might be removed. In determining the liability to additional rent, the Settlement Officer is by s. 52, sub-section 2, cl. (*c*), bound to consider the length of time during which the tenancy has lasted without dispute as to rent or area. Although only an occupancy ryot can bring a suit under s. 38, the principles laid down in that section ought to be taken into consideration in all proceedings for settlement of rent, whatever be the status of the ryot. GOURI PATTRA *v.* REILY.

[I. L. R. 20 Calc. 579

———, s. 40, cl. 5.—*Order commuting bhowli rent to nagdi rent—Omission to state time when order is to take effect.*] The provisions of cl. 5, s. 40 of the Bengal Tenancy Act, are imperative, and should be strictly complied with. Where, therefore, an order under that clause omitted to state the time from which it was to take effect, it was held to be inoperative. CHOWDHRY RAGHU NATH SARUN SINGH *v.* DHODHA ROY.

[I. L. R. 18 Calc. 467

———, s. 49.

See LANDLORD AND TENANT — FORFEITURE—DENIAL OF TITLE.

[I. L. R. 20 Calc. 101

———, s. 52.

See s. 38.

[I. L. R. 20 Calc. 579

See s. 104.

[I. L R. 20 Calc. 579

BENGAL TENANCY ACT (VIII OF 1885), s. 53—*continued.*

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[I. L. R. 21 Calc. 383

——, s. 53.—*Established usage of locality.*] The established usage of the locality, and not the usage between the parties, is that contemplated by s. 53 of the Bengal Tenancy Act. *Hira Lal Das* v. *Mothura Mohun Roy*. I. L. R. 15 Calc. 714, followed. WATSON AND COMPANY *v.* SREEKRISTO BHUMICK.

[I. L. R. 21 Calc. 132

——, s. 55.

See s. 108.

[I. L. R. 21 Calc. 521

——, s. 65.

See EXECUTION OF DECREE—DECREES UNDER RENT LAW.

[I. L. R. 17 Calc. 301

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[I. L. R. 21 Calc. 169

——, s. 69.

See PENAL CODE, s. 186.

[I. L. R. 18 Calc. 518

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.

[I. L. R. 17 Calc. 872

——, s. 70.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.

[I. L. R. 17 Calc. 872

——, s. 84.

See APPEAL—ACTS—BENGAL TENANCY ACT.

[I. L. R. 18 Calc. 271

[I. L. R. 19 Calc. 485

——, s. 84.—*Acquisition of land by landlord—Reasonable and sufficient purpose—Certificate of Collector—Jurisdiction and functions of the Civil Court.*] The proprietors of a *taluk* who had constructed an indigo factory and employed a European manager applied to the Civil Court, under s. 84 of the Tenancy Act, to acquire by compulsory sale a small piece of land made up of several *ryoti* holdings within the estate. The application was opposed by the proprietors of another indigo factory who had taken under-leases from the ryots the greater part of the lands of the village, including the holdings within which the plot in question was comprised. The Collector of the district had certified, under s. 84, that the purpose for which the land was required was reasonable and sufficient. The Munsif tried the matter as a disputed question of fact, and held that the purpose alleged was not reasonable or sufficient, and declined to authorise the purchase. The District Judge on appeal reversed the Munsif's finding and authorised the compulsory acquisition of the land:—*Held*, that there is no appeal against an order passed by a Civil Court under s. 84 of the Bengal Tenancy Act, and that the order of the District Judge was without jurisdiction and must be set aside. *Held* by PRINSEP and AMEER ALI, JJ. (PETHERAM, C.J., dissenting):—That the Collector's certificate under s. 84 is not conclusive as to the reasonableness and sufficiency of the purpose for which the land is sought to be acquired: that the jurisdiction of the Civil Court is not confined to giving effect to the Collector's certificate, but the Court is to hold a judicial enquiry to determine the reasonableness and sufficiency of the purpose and all matters coming within the section, and is competent to consider the grounds upon which the certificate was granted: That the appointment of a European manager and the necessity for erecting buildings for his comfort and convenience are insufficient grounds for authorising the compulsory acquisition of land under s. 84. The purpose for which the land is sought to be acquired must have a direct relation to the good of the holding, and objects which might have a remote or speculative bearing upon the good of the holding are foreign to the scope of the Act. *Held*, by PETHERAM, C.J.:—The section gives to the Collector jurisdiction to decide whether the alleged purpose is reasonable and sufficient, leaving to the Civil Court to settle the amount to be paid for the land, and the decision of the question whether the land is *bonâ fide* required for the alleged purpose. The words "satisfied on the certificate" mean that the Civil Court is to be satisfied on the certificate alone, and has no jurisdiction to take other evidence on that question, but is to accept the decision of the Collector as final. GOGHUN MOLLAH *v.* RAMESHUR NARAIN MAHTA. RAMESHUR NARAIN MAHTA *v.* GOGHUN MOLLAH.

[I. L. R. 18 Calc. 271

——, s. 86.

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 19 Calc. 790

——, s. 88.

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[I. L. R. 21 Calc. 433

——, s. 93, and ss. 95 and 99.—*Common Manager—Minor co-sharers—Court of Wards—District Judge, jurisdiction of.*] On the 8th June 1891 one of the co-sharers in an estate applied for the appointment of a common manager; but on objection taken by the other co-sharers this application was withdrawn. On the 4th March 1891, the same co-sharer applied to the Court to the effect that "proceedings might be taken under s. 93 of the Bengal Tenancy Act, and that the management of the estate might be taken over by the Court of Wards." The other co-sharers and

BENGAL TENANCY ACT (VIII OF 1885), s. 93—*continued.*

the representative of certain minor co-sharers objected to the appointment of a common manager, but consented to the estate being made over to the Court of Wards. On the 30th March 1892 the District Judge, without satisfying himself as to the necessity of the appointment of a common manager, ordered that the estate should be made over to the Court of Wards. The Court of Wards took over the estate, but subsequently refused to act, and the Board of Revenue directed that the estate should be released. On the 13th August 1892, the District Judge issued notices on the co-sharers under s. 93, calling on them to show cause why a common manager should not be appointed. All the co-sharers appeared and objected to the appointment of a common manager, but one of them and the representative of the minor co-sharers stated that they had agreed to appoint a private person manager of their shares. The District Judge therefore appointed such person temporarily as a common manager of the entire estate until the co-owners should take steps under s. 99 to satisfy the Court that they were in a position to manage the estate, and on the 24th March 1893, passed two orders on separate applications made by two of the co-sharers for the release of the estate, refusing to release it, as he was not satisfied that the management of the estate could be conducted without injury to the rights of the minor:—*Held*, that these orders of the 24th March 1893 were *ultra vires*. GANODA KANTA ROY *v.* PROBHABATI DASI.

[I. L. R. 20 Calc. 881

———, s. 95.

See FALSE EVIDENCE.

[I. L. R. 20 Calc. 724

1.—s. 101-115, Chap. X.—*Power of Settlement Officer to resume and assess lakhiraj land.*] In proceedings under Chapter X of the Bengal Tenancy Act (VIII of 1885) the Settlement Officer has no power to resume and assess with rent land which has been held as *lakhiraj*. PADMANAND SINGH *v.* BAJO.

[I. L. R. 20 Calc. 577

2.—s. 101-115, Chap. X—*Record of Rights—Settlement Officer's decision—Subsequent civil suit—Res judicata.*] A decision by a Settlement Officer under Chapter X of the Bengal Tenancy Act as to which of two persons claiming to be tenant ought to be recorded as such does not operate as *res judicata* in a subsequent civil suit between the same parties concerning the title to the land. PANDIT SARDAR *v.* MEAJAN MIRDHA.

[I. L. R. 21 Calc. 378

———, s. 102.

See s. 103.

[I. L. R. 19 Calc. 641

———, s. 102, and s. 101.—*Power of Settlement Officer—Proceedings in preparation of Record of Right—Decision as to validity of lakhiraj titles—Power of Revenue Officer to declare land claimed as lakhiraj liable to rent.*] *Held* by the Full Bench (PETHERAM, C.J., and PRINSEP, PIGOT, O'KINEALY, and GHOSE, JJ):—In preparing a record of rights under s. 102 of the Bengal Tenancy Act, a Revenue Officer is not competent to determine the validity of rent-free titles set up by persons occupying lands with the area under inquiry, so as to resume such lands and to declare them liable to settlement of rent. *Gokhul Sahu v. Jodu Nundun Roy*, I. L. R. 17 Calc. 721, referred to. SECRETARY OF STATE FOR INDIA *v.* NITYE SINGH. SECRETARY OF STATE FOR INDIA *v.* BAIKUNT NATH PRODHAN. SECRETARY OF STATE FOR INDIA *v.* RAM TARUCK DAS.

[I. L. R. 21 Calc. 38

1.—s. 103.—*Record of Rights—Dispute as to boundaries—Powers of an executive officer.*] An executive officer, acting under the provisions of s. 103 of the Bengal Tenancy Act, has no power to determine the boundaries between conterminous estates as to which a *bonâ fide* controversy exists between the owners of such estates. *Norendro Nath Roy Chowdhry v. Srinath Sandel*, I. L. R. 19 Calc. 641, relied on. BIDHU MUKHI DABI *v.* BHUGWAN CHUNDER ROY CHOWDHRY.

[I. L. R. 19 Calc. 643

2.—s. 103, and ss. 102, 106, 108.—*Powers of Settlement Officers—Record of Rights—Dispute as to boundaries.*] A Settlement Officer has no power, under the provisions of the Bengal Tenancy Act, to entertain any dispute between the persons interested in neighbouring estates as to the title of any land. NORENDRO NATH ROY CHOWDHRY *v.* SRINATH SANDEL.

[I. L. R. 19 Calc. 641

———, s. 104.

See APPEAL—ACTS—BENGAL TENANCY ACT.

[I. L. R. 17 Calc. 326

———, s. 104, sub-s. 2, and ss. 38, 52, sub-s. 2, cl. (c), chap. X, s. 101, sub-s. 2, cl. (a)—*Ancient holdings—Additional rent for excess lands—Onus of proving lands in excess of area originally let—Permanent deterioration—Liability to additional rent—Duty of Settlement Officer.*] S. 104, sub-section 2 of the Bengal Tenancy Act, is subject to the provisions of s. 52 of the Act. The mere fact that on a measurement made by a zemindar under the authority of Government, given under Chapter X of the Bengal Tenancy Act, it is found that the tenants generally are in possession of lands in excess of the areas entered in his zemindari papers and their rent receipts, does not necessarily prove that he is entitled to additional rent for the excess areas. Where settlements or holdings are of very old date and lands are let out by areas ascertained without any accurate survey, but as contained within certain recognised boundaries, for instance, by reference to other holdings, it is incumbent upon the zemindar seeking enhancement of rent very many years after the original settlement to show that the lands

BENGAL TENANCY ACT (VIII OF 1885), s. 104—*continued.*

held by the ryots are in excess of the lands originally let to them in consequence of some encroachment or some alluvial increment, or that the settlement was made on the basis of measurement and the rates of rent as applied to the area then determined, while on a fresh measurement made by the same length of measure it has been found that he is entitled to receive additional rent which by carelessness or neglect or some other cause he had hitherto lost. A liberal interpretation should be put upon the word "permanently" in s. 38, sub-section 1, cl. (*a*), and the word construed with reference to existing conditions. It cannot be said that a deterioration is not permanent, only because by the application of capital and skill it might be removed. In determining the liability to additional rent, the Settlement Officer is by s. 52, sub-section 2, cl. (*c*), bound to consider the length of time during which the tenancy has lasted without dispute as to rent or area. Although only an occupancy ryot can bring a suit under s. 38, the principles laid down in that section ought to be taken into consideration in all proceedings for settlement of rent, whatever be the status of the ryot. GOURI PATTRA *v.* REILY.

[I. L. R. 20 Calc. 579

——, s. 105.

See s. 108.

[I. L. R. 21 Calc. 521

——, s. 106.

See s. 103.

[I. L. R. 19 Calc. 641

See s. 108.

[I. L. R. 21 Calc. 521

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[I. L. R. 17 Calc. 721

——, s. 108.

See s. 103.

[I. L. R. 19 Calc. 641

See VALUATION OF SUIT—APPEALS.

[I. L. R. 18 Calc. 667

——, s. 108.—*Special Judge, Jurisdiction of—Publication of Record of Rights—Bengal Tenancy Act, ss.* 55, 105, 106.] There is nothing in s. 108 of the Bengal Tenancy Act which limits the jurisdiction of a Special Judge to deal only with matters of objection taken after publication of the record of rights. DURGA CHARAN LASKAR *v.* HARI CHURN DASS.

[I. L. R. 21 Calc. 521

——, s. 111.—*Suit for arrears of rent—Agreement to pay additional rent for excess land.*] When a tenant agrees to pay additional rent for excess land found on measurement to be in his

BENGAL TENANCY ACT (VIII OF 1885), s. 111—*continued.*

possession, and a suit is brought for the recovery of rent for such excess land, *held*, that such a suit is a suit for arrears of rent and is not barred under s. 111 of the Bengal Tenancy Act, as being a suit for alteration of rent within the meaning of cl. (*a*) of that section, merely because subsequent to the accrual of the rent there have been settlement proceedings under the Act and the land has been measured in connection therewith. RAMJAN ALI *v.* AMJAD ALI.

[I. L. R. 20 Calc. 903

——, s. 120, sub-s. 2.—*Record of Proprietor's land as private land—Grounds for determining land to be private—Evidence.*] In enacting sub-section 2 of s. 120 of the Bengal Tenancy Act, the Legislature had before it the attempts which might be expected on the part of landlords to frustrate the intention of the Legislature, as asserted in the Draft Bill laid before the Council for consideration, to extend the occupancy-rights of tenants before the measures then declared to be in contemplation became law; and therefore the particular date, the 2nd day of March 1883, the date on which the Draft Bill was published in the *Gazette*, and leave was obtained to introduce the Bill into the Council, was declared to be the latest date on which there should be free action on the part of zemindars to assert their private rights, so as to prevent the accrual of special tenant rights. From the wording of that sub-section, it was intended that in determining whether land is the private land of the proprietor, regard should be had to any declaration made before the 2nd March 1883 by the landlord, and communicated to the tenants, in respect to the reservation of the proprietor's right over the land as his private land: the words "any other evidence that may be produced" in that sub-section mean, therefore, any other evidence tending in the same direction that may be produced to show the assertion of any title on the part of the proprietor and communicated to the tenant before that date. NILMONI CHUCKERBUTTI *v.* BYKANT NATH BERA.

[I. L. R. 17 Calc. 466

——, ss. 143, 144, 148.

See SCH. III, ART 6.

[I. L. R. 21 Calc. 387

——, s. 149.—*Suit by third party claiming rent paid into Court in rent-suit, nature of—Title suit.*] The object of s. 149 of the Bengal Tenancy Act is to prevent tenants being harassed when disputes arise between rival claimants to the land in respect of which the rent is due. In a suit, therefore, under cl. (3) of s. 149 the plaintiff is entitled to have the question of title as well as that of possession tried, and to obtain the injunction therein mentioned. *Jagadamba Devi* v. *Protap Ghose*, I. L. R. 14 Calc. 537, referred to and explained. RUBIUNNESSA *v.* GOOLJAN BIBEE.

[I. L. R. 17 Calc. 829

BENGAL TENANCY ACT (VIII OF 1885), s. 149.—*continued.*

——, s. 150.—*Admission of rent due to landlord.*] S. 150 of the Bengal Tenancy Act is highly penal in its character and cannot be put in force against a defendant, unless he has intentionally admitted money to be due and has not paid it; and such admission must be in the action. Under the circumstances of this case it was held that the defendant had made no such admission. ALI AHAMMAD SIRDAR *v.* BEPIN BEHARI BOSE.

[I. L. R. 20 Calc. 595

——, s. 153.

See CASES UNDER APPEAL—ACTS—BENGAL TENANCY ACT, s. 153.

——, s. 158.

See s. 188.

[I. L. R. 17 Calc. 538

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 20 Calc. 249

1.—s. 158.—*Question as to boundaries—Standard measure of the district—Evidence taken by an Ameen under s.* 158 *of the Bengal Tenancy Act.*] Under a proceeding under s. 158 of the Bengal Tenancy Act, in which an enquiry was directed amongst other things, as to the boundaries of certain plots held by certain ryots, the Ameen took evidence as to the standard measure of the district, and the Court decided the case on their evidence:—*Held*, that, in determining the boundaries, the question as to what was the standard measure of the district arose, and that the evidence was rightly received and acted upon. DEOKI SINGH *v.* SEOGOBIND SAHOO.

[I. L. R. 17 Calc. 277

2.—s. 158.—*Application to determine incidents of tenancy and to set aside lease — Admission of tenancy—Landlord and tenant.*] An application made nominally for the determination of the incidents of a tenancy, but substantially for the purpose of setting aside the lease under which the tenant came into possession, does not come within the scope of s. 158 of the Bengal Tenancy Act. *Per* PETHERAM, C.J., PRINSEP, PIGOT, and GHOSE, JJ.—An admission of a tenancy in order to give jurisdiction under s. 158 does not bring the case within the meaning of the section, the object of the section being to enable the Court to ascertain what are the incidents of the existing arrangement between a landlord and his tenant, and not to enable the Court, in effect, to make a new contract for parties between whom no contract was in existence at and before the date of the application. *Per* NORRIS, J.—The true construction of the application was a question for the determination of the Division Bench. DEBENDRO KUMAR BUNDOPADHYA *v.* BHUPENDRO NARAIN DUTT.

[I. L. R. 19 Calc. 182

——, s. 169.

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[I. L. R. 21 Calc. 169

BENGAL TENANCY ACT (VIII OF 1885) —*continued.*

——, s. 170.—*Attachment of tenure in execution of decree for arrears of rent by a fractional co-sharer—Arrears of rent of separate share.*] An attachment of a tenure or holding in execution of a decree obtained by a fractional co-sharer for arrears of the rent of his separate share, is not such an attachment as is contemplated by s. 170 of the Bengal Tenancy Act. BENI MADHUB ROY *v.* JAOD ALI SIRCAR.

[I. L. R. 17 Calc. 390

——, s. 173.—*Sale for arrears of rent—Purchase by benamidar for judgment-debtor—Sale void or voidable—Suit to set aside sale—Proper Court to decide whether sale should stand or not.*] Where a sale takes place under the Bengal Tenancy Act in execution of a decree for arrears of rent, and the purchaser is found to be a mere *benamidar* for the judgment-debtor,—*held*, in a suit to set aside the sale on that ground, that on the wording of s. 173 the sale was only voidable, and not absolutely void: that section leaves it in the discretion of the Court to set aside the sale or not as it thinks fit. Under that section the proper Court to determine whether the sale should stand or not is the Court that held the sale. GOPAL CHUNDER MITRA *v.* RAM LAL GOSHAIN.

[I. L. R. 21 Calc. 554

1.—s. 174.—*Sale for arrears of rent—Deposit —Extension of time for when Court is closed.*] Where a tenure is sold for arrears of rent under the Bengal Tenancy Act of 1885, the judgment-debtor, under s. 174 of the Act, may apply to have the sale set aside on his depositing in Court for payment to the decree-holder the amount recoverable under the decree with costs, and for payment to the purchaser a sum equal to 5 per cent. of the purchase-money; and if the Court be closed on or before the last day of the period limited, the judgment-debtor may pay the said sum into Court on the 1st day the Court re-opens, notwithstanding the absence of express provision to that effect. SHOOSHEE BHUSAN RUDRO *v.* GOBIND CHUNDER ROY.

[I. L. R. 18 Calc. 231

See PEARY MOHUN AICH *v.* ANUNDA CHARAN BISWAS.

[I. L. R. 18 Calc. 631

2.—s. 174.—*Amount of deposit payable incorrectly calculated by an officer of the Court—Sale for arrears of rent.*] The judgment-debtor within 30 days from the date of sale deposited in Court, under s. 174 of the Bengal Tenancy Act, the amount which had been calculated in the office of the Munsif as the amount payable under the section. Subsequently on its being discovered that the amount was short by a small sum, the calculation being incorrect, the Munsif held that the provisions of the section had not been complied with, and passed an order confirming the sale:—*Held*, that when the amount payable by the judgment-debtor under s. 174 has been calculated and settled by an officer of the Court, and when that amount

BENGAL TENANCY ACT (VIII OF 1885), s. 174—*continued.*

has been paid into Court, an order setting aside the sale must be made by the Court as a matter of right. The order of the Munsif confirming the sale was therefore without jurisdiction and must be set aside. UGRAH LALL *v.* RADHA PERSHAD SINGH.

[I. L. R. 18 Calc. 255

3.—s. 174.—*Jurisdiction of Civil Court—Civil Procedure Code (Act XIV of 1882), s. 11—Right of suit to set aside sale for arrears of rent—Deposit in Court.*] No suit is maintainable to set aside a sale under the provisions of s. 174 of the Bengal Tenancy Act. The right under the section to have a sale set aside is not an abstract right which can be enforced by suit against any particular person, but is a right to call upon a Judge to set aside a sale, and on his refusal to proceed in revision. KABILASO KOER *v.* RAGHU NATH SARAN SINGH.

[I. L. R. 18 Calc. 481

——, s. 178.

See CASES UNDER LANDLORD AND TENANT — FORFEITURE — DENIAL OF TITLE.

——, s. 180.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION.

[I. L. R. 17 Calc. 393

——, s. 184.

See SCH. III, ART. 2.

[I. L. R. 19 Calc. 1

See SCH. III, ART. 3.

[I. L. R. 17 Calc. 926

1.—s. 188 and s. 158—*Co-sharers—Joint-landlords—Application under s. 158 by one of several joint-landlords—Refusal by joint-landlords to join in such application, effect of.*] An application under s. 158 of the Bengal Tenancy Act, 1885, cannot be made by one of several joint-landlords. S. 188 of the Act requires that such an application should be made by all the landlords acting together, and it is not a sufficient compliance with its provisions to make the landlords, who refuse to join, parties to the proceedings under s. 158. *Chuni Singh* v. *Hera Mahto*, I. L. R. 7 Calc. 633; *Kali Chandra Singh* v. *Rajkishore Bhuddro*, I. L. R. 11 Calc. 615; *Rashbehari Mukerji* v. *Sakhi Sundari Dasi*, I. L. R. 11 Calc. 644; *Abdool Hossein* v. *Lall Chand Mohtan*, I. L. R. 10 Calc. 36; *Prem Chand Nuskar* v. *Mokshoda Debi*, I. L. R. 14 Calc. 201; and *Jogobundhu Pattuck* v. *Jadu Ghose Alkushi*, I. L. R. 15 Calc. 47, referred to. MOHEEB ALI *alias* DUMMUR *v.* AMEER RAI.

[I. L. R. 17 Calc. 538

2.—s. 188.—*Co-sharers—Suit for enhancement of rent or for additional rent—Joint-landlords.*] Having regard to the provisions of s. 188 of the Bengal Tenancy Act, 1885, where two or more

BENGAL TENANCY ACT (VIII OF 1885), s. 188—*continued.*

persons are joint-proprietors, they must all join in bringing a suit for enhancement of rent or for additional rent. *Guni Mahomed* v. *Moran*, I. L. R. 4 Calc. 96, referred to. GOPAL CHUNDER DAS *v.* UMESH NARAIN CHOWDHRY.

[I. L. R. 17 Calc. 695

3.—s. 188.—*Ejectment, suit for—Co-sharers—Joint-landlords.*] S. 188 of the Bengal Tenancy Act of 1885 is no bar to a suit for ejectment by one or two joint owners when the suit is brought under the contract law on a breach of the conditions of a lease by the tenant. HARIPRIA DEBI *v.* RAM CHURN MYTI.

[I. L. R. 19 Calc. 541

4.—s. 188.—*Joint-landlords—Tenure, enhancement of rent of—Fractional co-sharers—Suit for enhancement of rent of a tenure by some only of several joint-landlords.*] The provisions of s. 188 of the Bengal Tenancy Act apply to a suit by some only of several joint-landlords to enhance the rent of a tenure, whether such tenure was in existence at the date of the permanent settlement or not, and preclude such a suit being brought. The plaintiffs, who were some only of the co-sharers in a zemindari, instituted a suit to enhance the rent of a tenure within the zemindari and to recover their share of the rent at the enhanced rate for a specified period. Of the tenure-holders, some were co-sharers of the plaintiffs in the zemindari and the remainder were not interested therein. It was admitted that the plaintiffs collected their share of the rent of the tenure separately from their co-sharers who were sharers in the tenure. The plaintiffs alleged that they had requested the latter to join them in instituting the suit, but that they had declined to do so, and they accordingly made them defendants in the suit:—*Held*, that the plaintiffs could not maintain the suit, having regard to the provisions of s. 188 of the Act. The term "joint-landlords" in that section must be taken as including all co-sharers under whom a tenant holds, whether such co-sharers collect their *quota* of rent from the tenants jointly or separately. *Prem Chand Nuskur* v. *Mokshoda Debi*, I. L. R. 14 Calc. 201; *Gopal Chunder Das* v. *Umesh Narain Chowdhry*, I. L. R. 11 Calc. 695; and *Beni Madhub Roy* v. *Jaod Ali Sircar*, I. L. R. 17 Calc. 390, referred to. HALADHAR SAHA *v.* RHIDHOY SUNDRI.

[I. L. R. 19 Calc. 593

5.—s. 188.—*Joint-landlords — Arrangement with fractional co-sharers, effect of—Separate tenancy, creation of.*] Where a tenant has agreed to allow one of several co-sharer landlords to deal with him as if he were his own tenant without any regard to the interests of the other co-sharers, the effect is to create a separate tenancy under such fractional co-sharer, and s. 188 of the Bengal Tenancy Act is inapplicable to such a case. *Gopal Chunder Das* v. *Umesh Narain Chowdhry*, I. L. R. 17 Calc. 695, distinguished. PANCHANAN BANERJI *v.* RAJ KUMAR GUHA.

[I. L. R. 19 Calc. 610

BENGAL TENANCY ACT (VIII OF 1885) —*continued.*

6.—s. 188.—*Co-sharers—Suit by one co-sharer entitled to collect rent separately, for additional rent for land brought under cultivation, payable in terms of lease—Joint-landlords—Suit for rent—Collection of rent separately.*] A tenant held 19½ *bighas* of land under a *kabuliat* granted by three joint-landlords, which provided, *inter alia*, that rent was to be paid at the rate of Re. 1-8 *per bigha* in respect of 8 *bighas* only, and that the remaining 11½ *bighas*, which were then unculturable, should, when they became fit for cultivation, be assessed with rent at the same rate. One of the co-sharers who was admittedly entitled, under arrangement, to collect his share of the rent separately, instituted a suit against the tenant, joining his co-sharers as defendants, to recover arrears of his share of the rent for a specific period, and claimed to be entitled to recover rent in respect of the whole 19½ *bighas*, on the allegation that the 11½ *bighas* had then become fit for cultivation, and were therefore liable to be assessed with rent at the rate mentioned in the *kabuliat*. The tenant objected that, having regard to the provisions of s. 188 of the Bengal Tenancy Act, the suit would not lie at the instance of the plaintiff alone:—*Held*, that the suit did lie. It was clearly not one for enhancement of rent in the sense in which that term is used in the Bengal Tenancy Act nor was it one for additional rent for excess land within the meaning of s. 52 of that Act, and as the plaintiff was entitled to collect his share of the rent separately, there was no reason why he should not be entitled to claim separately the rent payable, not upon any fresh adjustment of the rent inconsistent with the continuance of the old tenancy, but upon an ascertainment of the rent payable in accordance with the terms of the original letting. *Guni Mahomed* v. *Moran*, I. L. R. 4 Calc. 96, and *Gopal Chunder Das* v. *Umesh Narain Chowdhry*, I. L. R. 17 Calc. 695, distinguished. RAM CHUNDER CHUCKRABUTTY *v.* GIRIDHUR DUTT.

[I. L. R. 19 Calc. 755

——, s. 195.

See s. 13.

[I. L. R. 18 Calc. 360

See s. 15.

[I. L. R. 19 Calc. 504

See BENGAL REGULATION VIII OF 1819.

[I. L. R. 17 Calc. 162

1.—Sch. III, Art. 2.—*Limitation — Suit for arrears of rent at excess rate.*] In 1865 the plaintiff sued and obtained a decree for payment of additional rent for excess land held by the defendant, and, on the 29th March 1877, instituted another suit against the defendant for *khas* possession of newly-accreted lands, or in the alternative, for an assessment of rent thereon according to the terms of the defendant's *kabuliat*. This suit was dismissed on the 29th June 1881; but, on appeal to the High Court, this decision was reversed on the 11th May 1883, and *khas* possession was given to the plaintiff. On appeal, the

BENGAL TENANCY ACT (VIII OF 1885), Sch. III, Art. 2—*continued.*

Privy Council, on the 24th July 1886, reversed the decree for *khas* possession, and declared the plaintiff entitled to a decree, fixing the extent of the excess lands, and assessing rent therefor in terms of the *kabuliat*, such rent to be payable from and after the 28th March 1878; and remitting the case for a finding as to the extent of the excess lands. The Subordinate Judge, to whom the case was remitted, gave the plaintiff a decree on the 21st March 1887 for increased rent in respect of 2 *kanis* 7 *gundahs* 2 *cowries* of excess land. On the 14th July 1887, the plaintiff instituted a suit to recover excess rent for the year 1878 to 1886, and for rent at the old rate *plus* the excess rent for a portion of the year 1887:—*Held*, that the suit, so far as the rent for 1878 to 1883 was concerned, was barred by limitation. HURRO KUMAR GHOSE *v.* KALI KRISHNA THAKUR.

[I. L. R. 17 Calc. 251

2.—Sch. III, Art. 2.—*Limitation for rent-suit —Rent payable under a lease—Registered lease.*] The Bengal Tenancy Act (VIII of 1885) prescribes one period of limitation for all suits for rent brought under its provisions. Art. 2 of the third schedule of that Act includes a suit to recover arrears of rent payable under a lease, and there is no distinction as to the form of the lease, or as to whether it is registered or not. *Umesh Chunder Mundul* v. *Adormoni Dasi*, I. L. R. 15 Calc. 221, and *Vythilinga Pillai* v. *Thetchanamurti Pillai*, I. L. R. 3 Mad. 76, distinguished. ISWARI PERSHAD NARAIN SAHI *v.* CROWDY.

[I. L. R. 17 Calc. 466

3.—Sch III, Art. 2, and s. 184.—*Limitation —Suits for rent on registered contracts.*] Suits for rent, founded on registered contracts in respect of lands subject to the provisions of the Bengal Tenancy Act, are governed by the limitation provided in that Act. MACKENZIE *v.* MAHOMED ALI KHAN.

[I. L. R. 19 Calc. 1

4.—Sch. III, Art. 2.—*Lease not for agricultural or horticultural purposes—Building lease.*] The special limitation provided by Art. 2, Sch. III of the Bengal Tenancy Act, is not applicable to a registered lease granted for building purposes and for establishing a coal depôt, such lease not being one for agricultural or horticultural purposes within the meaning of that Act. RANIGANJ COAL ASSOCIATION *v.* JUDOONATH GHOSE.

[I. L. R. 19 Calc. 489

——, Sch. III, Art. 3.—*Limitation—Bengal Tenancy Act, s. 184—Suit for possession by an occupancy-ryot.*] Having regard to the provisions of s. 184 of the Bengal Tenancy Act, 1885, the period of limitation for a suit for the recovery of land by an occupancy-ryot, is two years, as prescribed by Art. 3, Sch. III of the Act. *Saraswati Dasi* v. *Horitarun Chuckerbutti*, I. L. R. 16 Calc. 741, followed. RAMDHAN BHADRA *v.* RAM KUMAR DEY.

[I. L. R. 17 Calc. 926

BENGAL TENANCY ACT (VIII OF 1885) —*concluded.*

———, Sch. III. Art. 6—*Limitation— Ex-parte decree in suit for rent — Civil Procedure Code, s.* 108—*Execution of decree, application for—Final decree—Execution-proceedings struck off—Bengal Tenancy Act* (*VIII of* 1885), *ss* 143, 144, 148.] Having regard to ss. 143, 144 and 148 of the Bengal Tenancy Act, there is a special procedure laid down for rent-suits; and therefore decrees in rent-suits are decrees under Art. 6 of Sch. III of that Act. The words "final decree" in Art. 6, Sch. III of the Bengal Tenancy Act, refer to the final decree in the suit, and cannot be held to include an order of an Appellate Court made in an application to set aside that decree under s. 108 of the Code of Civil Procedure. An *ex-parte* rent-decree having been obtained on the 30th May 1888 for a sum under Rs. 500, the decree-holder on the 27th May 1889 applied for execution thereof and attached certain properties of the judgment-debtor, the date fixed for the sale being the 31st August 1889. The judgment-debtor applied under s. 108 of the Civil Procedure Code for a rehearing of the rent-suit, and on the day fixed for the sale applied for stay of execution: the sale was stayed, and the Court of its own motion and for its own convenience directed the execution case to be struck off the file "for the present." On the 28th December 1889 the Court passed an order refusing a rehearing of the suit, which order was upheld on appeal on the 16th May 1890. On the 21st January 1892 the decree-holder again applied for execution, at the same time praying that his application might be taken to be in continuation of his former application of the 27th May 1889:—*Held*, that the application was one in continuation of the former proceedings in execution so far, at least, as regarded the property mentioned in the former application, but as regards other properties it must be held to be barred as not having been made within three years from the decree of the 30th May 1883. BAIKANTA NATH MITTRA *v.* AUGHORE NATH BOSE.

[I. L. R. 21 Calc. 387

BEQUEST FOR CHARITABLE USES.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 448

BEQUEST FOR MASSES.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 424

BEQUEST FOR RELIGIOUS PURPOSES.

See HINDU LAW—WILL—POWER OF DISPOSITION.

[I. L. R. 16 Mad. 353

BETTING ON RAINFALL.

See GAMBLING.

[I. L. R. 17 Bom. 184

BHAGDARI TENURE.

See CASES UNDER BOMBAY ACT V OF 1862.

BHUINHARI REGISTER.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.

[I. L. R. 19 Calc. 91

BIDDERS AT COURT-SALE.

See SALE IN EXECUTION OF DECREE—BIDDERS.

[I. L. R. 14 Mad. 235

BIGAMY.

1.—*Marriage — Conversion of Hindu wife to Mahomedanism — Marriage with Mahomedan — Mahomedan Law—Marriage—Penal Code, s.* 494.] The petitioner, originally a Hindu woman, and the illegitimate offspring of Chattri parents, was duly married according to Hindu rites to *D*, who was also by caste a Chattri. Subsequent to the marriage the petitioner became a convert to Mahomedanism and married a Mahomedan. She was charged with and convicted of an offence under s. 494 of the Penal Code. It was contended on her behalf that—(1) the marriage between her and *D* was invalid under Hindu law by reason of her illegitimacy and the consequent difference of caste between the contracting parties; (2) the marriage between her and *D* became dissolved under the Hindu law on her conversion to Mahomedanism; and (3) the second marriage was not void under the Mahomedan law by reason of its taking place in the lifetime of *D*, and that the conviction was therefore erroneous. There was no evidence of any notice having been given to *D* previous to the second marriage calling on him to become a Mahomedan:—*Held*, that illegitimacy under Hindu law is no absolute disqualification for marriage, and that when one or both contracting parties to a marriage are illegitimate, the marriage must be regarded as valid, if they are recognized by their caste people as belonging to the same caste. *Held*, also, that there is no authority in Hindu law for the proposition that an apostate is absolved from all civil obligations, and that, so far as the matrimonial bond is concerned, such a view would be contrary to the spirit of that law, which regards it as indissoluble, and that accordingly the marriage between the petitioner and *D* was not, under the Hindu law, dissolved by her conversion to Mahomedanism. *Rahmed Beebee* v. *Rokeya Beebee* (1 Norton's Leading cases on Hindu Law, p. 12) dissented from. *Held*, further, that as the validity of the second marriage depended on the Mahomedan law, and as that law does not allow a plurality of husbands, it would be void or valid according as the first marriage was or was not subsisting at the time it took place: that no notice having been given to *D* as required by Mahomedan law previous to the second marriage, and no recourse having been had to the Courts for the purpose of obtaining a declaration that the former marriage was dissolved, and as British India cannot be held to be a foreign country for the purpose of rendering such notice unnecessary, the previous marriage was not dissolved under Mahomedan law, and the subsequent marriage was therefore void. *Held*, accordingly,

BIGAMY—*concluded.*

that the conviction was right. IN THE MATTER OF THE PETITION OF RAM KUMARI.

[I. L. R. 18 Calc. 264

2.—*Mahomedan law—Marriage—Child marriage—Option of minor of repudiating marriage on attaining puberty—Want of ratification after puberty—Penal Code, s.* 494.] *B*, a Mahomedan girl whose father was dead, was alleged to have been given in marriage by her mother to *J* some years before she attained puberty. Prior to her attaining puberty, *J* was sentenced to a term of imprisonment for theft. While he was in jail *B*, after she had attained puberty, contracted a marriage with *P*. The marriage with *J* was never consummated. On *J* being released from jail, he proceeded to prosecute *B* and *P* for bigamy and abetment of bigamy, and also charged *P* with adultery. It appeared that before taking proceedings, *J* requested *B* to return to him, but she refused to do so. The marriage between *B* and *J* was sought to be proved by the evidence of *J*, *B's* mother, and two witnesses who were said to have been present. *B* and *P* were both convicted:—*Held*, on appeal, that the evidence of the marriage between *B* and *J* was insufficient to justify a conviction in the absence of proof that a Mellah was present at the ceremony, or that the *sigha* required to be recited at the marriage of minors was recited, or the *akd* performed. *Held*, further, that assuming *B* to have been given in marriage to *J* when a mere child by her mother, she had the option of either ratifying or repudiating such marriage on attaining puberty. Under the *Shia* law, such a marriage is of no effect until it has been ratified by the minor, and under the *Suni* law it is effective till cancelled by the minor. Under both schools of law the minor has the absolute power, on attaining puberty, to ratify or cancel an unauthorized marriage, though under the *Suni* law ratification is presumed if the girl remains silent after attaining puberty and allows the marriage to be consummated. *Held*, on the facts of the case, that the circumstances afforded sufficient indication, even assuming the girl to be governed by the *Suni* law, that she never ratified the marriage. *Held*, also, that a judicial order was not necessary to effect the cancellation of the marriage. BADAL AURAT *v.* QUEEN-EMPRESS.

[I. L. R. 19 Calc. 79

3.—*Sagai or nikka marriage—Relinquishment of wife—Penal Code, s.* 494.] A conviction under s. 494 of the Penal Code cannot be supported where there is evidence to show that, by the custom of the caste, *sagai* or *nikka* marriage was admissible, and that the husband had relinquished his wife. *In re Chamia*, 7 C. L. R. 354, followed. JUKNI *v.* QUEEN-EMPRESS.

[I. L. R. 19 Calc. 627

BILL OF EXCHANGE.

See PROMISSORY NOTE.

[I. L. R. 19 Calc. 242

BILL OF EXCHANGE—*concluded.*

1.—*Liability of Drawer—Dishonour of Bill.*] There is no debt due by a drawer of a bill-of-exchange until dishonour. MILLER *v.* NATIONAL BANK OF INDIA.

[I. L. R. 19 Calc. 146

2.—*Negotiable Instruments Act (XXVI of* 1881), *ss.* 6, 8, 17, 30, 32, 78, 85, 92—*Drawer and drawee the same person—Forged endorsement of payee—Payment by drawee on forged endorsement—Liability of drawer—Ambiguous instrument—Election to treat it as a promissory note.*] On the 29th April 1889, the plaintiff's brother-in-law, *E*, purchased from the defendant's branch at Mauritius a bill-of-exchange drawn on their Bank at Bombay payable on demand to the plaintiff's order in Bombay. The bill was in the following terms:—"The New Oriental Bank Corporation, Limited, Mauritius, 29th April 1889. On demand pay this first of exchange (second of same tenor and date being unpaid) to the order of Sulleman Hussein six hundred and forty rupees for value received. For the New Oriental Bank Corporation, Limited. To the New Oriental Bank Corporation, Limited, Bombay." *E* sent the bill by registered post to Bombay addressed to the plaintiff. During its transmission it was stolen. On the 18th May it was presented by some person to the defendant's Bank in Bombay bearing a forged endorsement in blank of the plaintiff, and it was paid by the Bank. The plaintiff, as soon as he heard of the loss of the bill made inquiry at the Bank, and was told that the bill had been paid. On being shown the endorsement, the plaintiff pronounced it to be a forgery, and demanded payment of the bill, which the Bank refused. He thereupon filed this suit against the Bank as drawers of the bill:—*Held*(1) That the document was an "ambiguous instrument" within the meaning of s. 17 of the Negotiable Instruments Act (XXVI of 1881), and that the plaintiff had elected to treat it as a bill-of-exchange. (2) That, treating the document as a bill-of-exchange, the defendants, as drawers, were discharged by the payment to the *de facto* holder who presented it for payment. SULLEMAN HOSSEIN *v.* NEW ORIENTAL BANK CORPORATION.

[I. L. R. 15 Bom. 267

BLINDNESS, DISQUALIFICATION OF.

See MALABAR LAW—JOINT FAMILY.

[I. L. R. 15 Mad. 483

BOARD OF REVENUE, ORDERS OF.

See ACT IX OF 1847.

[I. L. R. 17 Calc. 590

BOMBAY ABKARI ACT (BOMBAY ACT V OF 1878).

——, ss. 43, 47.—*Illegal importation of liquor—Illegal possession of liquor—When separate offences.*] A man who illegally imports liquor may keep it in his possession for some time after he imports it. The importation and possession in such a case would be distinct offences under ss. 43 and 47, respectively, of the Bombay Abkari Act (V of 1878). But where the importation

BOMBAY ABKARI ACT (BOMBAY ACT V OF 1878), ss. 43, 47—*continued.*

involves possession of liquor, the accused can only be convicted of the offence under s. 43 of the Act. QUEEN-EMPRESS *v.* CHAND VALAD KITAB.

[I. L. R. 14 Bom. 583

———, ss. 43, 47, 53.—*Possession of liquor not satisfactorily accounted for—Presumption arising from such possession.*] The accused had in his possession a quantity of toddy in excess of that permitted by law. He was unable to account satisfactorily for the possession of the excess quantity. He was, therefore, prosecuted under ss. 43 and 47 of the Bombay Abkari Act (V of 1878) and convicted under both sections:—*Held*, that the conviction under s. 43 was bad. In the absence of any evidence to show that the accused had manufactured the toddy, or been in possession of a still, or had transported toddy from one place to another, no presumption could be drawn, under s. 53, of any offence described in s. 43. The only presumption arising from possession not properly accounted for was that the possession was illegal, and the accused could only be convicted under s. 47 of the Act. QUEEN-EMPRESS *v.* BYRAMJI KHARSEDJI.

[I. L. R. 14 Bom. 93

———, s. 45 and s. 53.—*Servants of a holder of a license, liability of.*] Under s. 45 (*c*) of the Bombay Abkari Act (V of 1878) the servants of the holder of a license granted under the Act cannot be made liable for a breach of the conditions of the license. Though under s. 53 of the Act, the holder of a license under the Act is responsible, as well as the person there described as "the actual offender," for any offence committed by any person in his employ or acting on his behalf under ss 43, 44, 45, or 46 as if he had himself committed the offence, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence, yet s. 45 does not make "the actual offender," if he be the servant of a licensee, punishable, unless he is himself the holder of a license granted under the Act. QUEEN-EMPRESS *v.* RAMCHANDRA MATADIN.

[I. L. R. 15 Bom. 45

———, s. 45, cl. (c).—*Omission to keep the minimum quantity of liquor according to the terms of license, not an offence under the Act.*] Where the accused, who was a licensed liquor contractor, omitted to keep in his shop the minimum quantity of liquor required by the terms of his license:—*Held*, that the omission of the accused did not come within the meaning of s. 45, cl. (*c*) of the Bombay Abkari Act (V of 1878). QUEEN-EMPRESS *v.* GOBIND.

[I. L. R. 16 Bom. 669

———, s. 55.—*Construction of Statutes—"Or" read "nor"—Order of confiscation.*] S. 55 of the Bombay Abkari Act (V of 1878) provides that "no order of confiscation shall be made until the expiration of one month from the date of seizing the things intended to be confiscated or without hearing any person who claims a right thereto, and the evidence, if any, which he produces in support of his claim." Certain casks of vinegar belonging to the plaintiffs were seized by the Collector of Bombay on the 5th November 1891, and an order of confiscation was made on the 17th November 1891. The order was made after hearing the plaintiffs:—*Held*, that under the provisions of the Abkari Act, s. 55, the Collector could not make a valid order of confiscation before the expiration of one month from the date of seizure. FRAMJI MANEKJI PUNJAJI *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 17 Bom. 154

BOMBAY ACT, 1862—V.

———, s. 3.—*Bhagdari tenure—Undivided share of a bhag, alienation of.*] The alienation of an undivided portion of a *bhag*, or share in the *bhag*, to a person who is not a *bhagdar*, is void under s. 3 of Bombay Act V of 1862. BIRDWOOD, J., dissented. PARSHOTAM BHAISHANKAR *v.* HIRA PARAG.

[I. L. R. 15 Bom. 172

———, 1863—II.

See SERVICE TENURE.

[I. L. R. 15 Bom. 13

———, 1863—VII.

See SERVICE TENURE.

[I. L. R. 15 Bom. 13

See SETTLEMENT — CONSTRUCTION OF SETTLEMENT.

[I. L. R. 17 Bom. 407

———, 1867—III.

See CANTONMENT ACT (BOMBAY ACT III OF 1867.)

———, 1867—VII.

See BOMBAY DISTRICT POLICE ACT.

———, 1868—IV.

See BOMBAY DISTRICT MUNICIPAL ACT, s. 33.

[I. L. R. 15 Bom. 516

———, 1869—III.

1. ———s. 8.—*Local-fund cess—Tenant's liability to pay the cess imposed by an act subsequent to the lease - Landlord and tenant.*] Under s. 8 of Bombay Act III of 1869 a lessor, who is in the position of a superior holder, may recover the local-fund cess from his lessee. *Ranga* v. *Suba Hedge*, I. L. R. 4 Bom. 473, followed. RAM TUKOJI *v.* GOPAL DHONDI.

[I. L. R. 17 Bom. 54

2. ———s. 8.—*Local-fund cess—Inamdar—Superior holder—Liability of inamdar to pay the cess.*] An *inamdar* is a "superior holder" within the definitions of Regulation XVII of 1827 and

BOMBAY ACT, 1869—III, s. 8—*concluded,*

Bombay Acts I of 1865 and V of 1879. He is, therefore, the person primarily liable to pay the local-fund cess under s. 8 of Bombay Act III of 1869. There is no provision of law entitling an *inamdar* to charge for his expenses in collecting the cess. SECRETARY OF STATE FOR INDIA *v.* BALVANT RAMCHANDRA NATU.

[I. L. R. 17 Bom. 422

———, 1872—III.

See BOMBAY MUNICIPAL ACTS.

———, 1873—VI.

See BOMBAY DISTRICT MUNICIPAL ACT.

———, 1874—III.

See HEREDITARY OFFICES ACT.

———, 1876—III.

See MAMLATDARS COURTS ACT.

———, 1878—IV.

See BOMBAY MUNICIPAL ACTS.

———, 1878—V.

See BOMBAY ABKARI ACT.

———, 1879—V.

See BOMBAY LAND REVENUE ACT.

———, 1879—VI.

See BOMBAY PORT TRUST ACT.

———, 1887—IV.

See GAMBLING.

[I. L. R. 16 Bom. 283
[I. L. R. 17 Bom. 184

———, 1888—III.

See BOMBAY MUNICIPAL ACT, 1888.

———, 1888—VI.

See GUJARAT TALUQDARS ACT.

———, 1890—I.

See GAMBLING.

[I. L. R. 16 Bom. 283
[I. L. R. 17 Bom. 184

BOMBAY CIVIL COURTS ACT (XIV OF 1869).

———, s. 8.

See DISTRICT JUDGE, JURISDICTION OF.

[I. L. R. 14 Bom. 627

———, s. 16.—*Cases referred by District Judge to Assistant Judge for trial—"Miscellaneous applications"—Land Acquisition Act (X of 1870)—References to District Court by the Collector—Succession Certificate Act (VII of 1869)—Guardians and Wards Act (VIII of 1890)—Applications under special Acts.*] Although the expression "miscellaneous applications" in s. 16 of the Bombay Civil Courts Act (XIV of 1869) may be large enough to include references by the Collector under the Land Acquisition Act (X of 1870), the latter part of s. 16, as it stood before that section was amended by Acts VII of 1889 and VIII of 1890, indicates that it was not the intention of the Legislature to empower a District Judge to refer to an Assistant Judge applications under special Acts for disposal. ASSISTANT COLLECTOR OF PRANT BASSEIN *v.* ARDESIR FRAMJI.

[I. L. R. 16 Bom. 277

———, s. 17.

See DISTRICT JUDGE, JURISDICTION OF.

[I. L. R. 15 Bom. 107

———, s. 27.—*Power "to hear" appeals—Power to hear question of limitation—Practice.*] Where a District Judge admits an appeal filed beyond time, and the appeal is referred for disposal to a Subordinate Judge with appellate powers, the Subordinate Judge has the power to consider whether the delay in presenting the appeal is sufficiently accounted for. The power "to hear" an appeal conferred by s. 27 of the Bombay Civil Courts Act (XIV of 1869) includes also the power to hear any question as to limitation relating thereto. MULNA AMAD *v.* KRISHNAJI GANESH GODBOLE.

[I. L. R. 14 Bom. 594

———, s. 28.

See SUBORDINATE JUDGE, JURISDICTION OF.

[I. L. R. 14 Bom. 371

BOMBAY DISTRICT MUNICIPAL ACT (BOMBAY ACT VI OF 1873).

———, s. 33.—*Sanad under the Bombay City Survey Act (Bombay Act IV of 1868)—The right of the Municipality to call for the production of the sanad.*] Under s. 33 of the Bombay District Municipal Act (Bombay Act VI of 1873) the Municipality has no right to insist on the production of a *sanad* issued under s. 10 of the City Survey Act (Bombay Act IV of 1868) before granting permission to build. IN RE JAMNADAS DULABDAS.

[I. L. R. 15 Bom. 516

———, s. 73.—*Power of the Municipality to suppress caste-feasts on the outbreak of cholera—Meaning of the words "take such measures as may be deemed necessary"—Penal Code, s. 188—Construction of statutes.*] The City of Ahmedabad being threatened with an outbreak of cholera, the President of the local Municipality, acting under s. 73 of Bombay Act VI of 1873 issued an order, in the form of a proclamation, prohibiting the holding of caste-feasts when over thirty persons were to assemble. After the promulgation of this order the accused gave a feast in a private house to upwards of thirty people of his caste. He was thereupon convicted, under s. 188 of the Penal Code for disobedience of an order duly

BOMBAY DISTRICT MUNICIPAL ACT (BOMBAY ACT VI OF 1873), s. 73—*concld.*

promulgated by a public servant, and sentenced to pay a fine of Rs. 35:—*Held* (reversing the conviction and sentence), that s. 73 of the Bombay District Municipal Act (VI of 1873) did not empower the Municipality to place an interdict on people meeting together to eat and drink in their own houses. The words in the section, "take such measures as may be deemed necessary to prevent, meet, or suppress the outbreak," imply in themselves something actively to be done by the Municipality, rather than any limitation to be imposed on the private rights of the citizens in their relations of daily life. Special measures for the health of the town—such as sulphur fumigation, daily flushing of sewers, insistance on good house sanitation, isolation of infected districts, and other similar steps to be taken by the authorities themselves—fall naturally within the meaning of the terms of the section. The Court ought not to strain an Act in favour of an interference with private rights which is not justified by the primary sense of the language. QUEEN-EMPRESS *v.* HARILAL.

[I. L. R. 14 Bom. 180

———, s. 84—*Nature of proceedings taken under s. 84 for the recovery of municipal taxes—Magistrate's duty under the section.*] A proceeding before a Magistrate for the recovery of municipal cesses and taxes instituted under s. 84 of Bombay Act VI of 1873, is a criminal prosecution, and must be conducted in the manner prescribed for summary trials under Chapter XXII of the Code of Criminal Procedure (Act X of 1882). In such a proceeding a Magistrate is not bound to order payment of the full amount claimed by the Municipality, but must satisfy himself as to the extent of the defaulter's legal liability before passing any order against him. MUNICIPALITY OF AHMEDABAD *v.* JUMNA PUNJA.

[I. L. R. 17 Bom. 731

BOMBAY DISTRICT POLICE ACT (BOMBAY ACT VII OF 1867), s. 16.

See BOMBAY LAND REVENUE ACT, ss 153, 159.

[I. L. R. 16 Bom. 455

See BOMBAY REVENUE JURISDICTION ACT, s. 4.

[I. L. R. 16 Bom. 455

BOMBAY LAND REVENUE ACT (BOMBAY ACT V OF 1879).

———, s. 37.

See s. 135.

[I. L. R. 15 Bom. 424

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURTS.

[I. L. R. 17 Bom. 293

———, s. 56.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[I. L. R. 16 Bom. 134

BOMBAY LAND REVENUE ACT (BOMBAY ACT V OF 1879)—*continued.*

———, s. 56, and ss. 122, 153, 155, and 187—*Charges incurred in connection with boundary marks—Effect of revenue sale—Mode of recovering such charges—Sale for recovery of such charges—Rights of incumbrancers.*] The effect of s. 187 of the Bombay Land Revenue Code (Bombay Act V of 1879) is to make the provisions of ss. 153 and 56, and also those of s. 155, applicable to sales for the recovery of charges assessed under s. 122 in connection with boundary marks. Such charges may be recovered either by forfeiture of the occupancy in respect of which the arrear is due, or by sale of the defaulter's immoveable property other than the land on which the arrear is due. In the former case the land is sold freed from all incumbrances created by the occupant. In the latter case the rights of incumbrancers are not touched. VENKTESH RAMKRISHNA *v.* MHAL PAI BIN NARU PAI.

[I. L. R. 15 Bom. 67

———, s. 57.

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[I. L. R. 16 Bom. 134

———, s. 83.

See LANDLORD AND TENANT—NATURE OF TENANCY.

[I. L. R. 14 Bom. 392
[I. L. R. 16 Bom. 646

———, s. 84.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

[I. L. R. 15 Bom. 407

———, ss. 85, 86.—*Inamdar, assignee of—Suit to recover enhanced rent—Assistance of the Collector.*] Ss. 86 and 87 of the Land Revenue Code (Bombay Act V of 1879) do not make it compulsory on the *inamdar*, or his assignee, to ask for the assistance of the Collector to recover enhanced rent from the tenants. If the *inamdar*, or his assignee, had made a demand on the tenants for the enhanced rent through the hereditary *patel*, or village accountant, as required by s. 85 of the Code, and they had refused, he would have become at once entitled to his ordinary civil remedy. GOVINDRAV KRISHNA RAIBAGKAR *v.* BALU BIN MONARA.

[I. L. R. 16 Bom. 586

———, s. 86.

See RIGHT OF OCCUPANCY—LOSS OR FORFEITURE OF RIGHT.

[I. L. R. 17 Bom. 677

———, s. 122.

See s. 56.

[I. L. R. 15 Bom. 6

BOMBAY LAND REVENUE ACT (BOMBAY ACT V OF 1879)—*continued.*

——, s. 135 and s. 37.—*Limitation Act (XV of 1877), Sch. II, Art. 14—Grant of land by Collector—Suit to recover possession as against grantee.*] On the 1st September 1882, the Collector of Ahmednagar by an order under s. 37 of the Land Revenue Code (Bombay Act V of 1879) granted a piece of open ground to *N* for building purposes. On the 31st March 1888, *S* brought a suit against *N* and the Secretary of State for India in Council to recover possession of the ground, and to set aside the Collector's order:—*Held*, that the suit, not being brought within one year from the date of the Collector's order, as provided for in s. 135 of the Land Revenue Code, was time-barred. NAGU *v.* SALU.

[I. L. R. 15 Bom. 424

——, s. 153.

See s. 56.

[I. L. R. 15 Bom. 67

See RIGHT OF OCCUPANCY — LOSS OR FORFEITURE OF RIGHT.

[I. L. R. 17 Bom. 677

——, s. 153, and ss. 159 and 162—*Attachment for arrears of land revenue—Forfeiture—Applicability of the Land Revenue Code to talukdari villages—Bombay District Police Act (Bombay Act VII of 1867) s. 16—Cost of punitive police post.*] The Bombay Land Revenue Code (Bombay Act V of 1879) applies to *talukdari* villages in the Ahmedabad district. Such villages fall within the description of "alienated holdings" as defined by the Code. When a *talukdari* village is attached under s. 159 of the Code for arrears of land revenue, so long as the attachment subsists, an order of forfeiture under s. 153 is illegal. The plaintiff was the *talukdar* of the village of *K*. At the end of the revenue year, 1878-79, that is, on 31st July 1879, the plaintiff was a defaulter in respect of the assessment payable to Government for that year. In November 1879, a punitive police post was established in the village under s. 16 of Bombay Act VII of 1867 on account of the turbulent conduct of the inhabitants. Between April and January 1880 the Collector sold certain property of the *talukdar* for arrears of revenue and realized by the sale a sum of Rs. 1,608, a sum more than sufficient to cover the arrears due for 1878-79 as well as the assessment payable for 1879, but the Collector after deducting the arrears due for 1878-79 applied the rest of the sale-proceeds towards the payment of the cost of the punitive post. The assessment for 1879-80 having remained unpaid, the village was attached on the 1st July 1880 under s. 159 of the Bombay Land Revenue Code (Act V of 1879). The attachment was followed on the 6th January 1881 by an order declaring the village to be forfeited under s. 153 of the Code. In 1886 the plaintiff sued Government to recover possession of the village and for a declaration that the order of forfeiture was illegal and *ultra vires*. The defendant contended that it was valid and legal:—*Held*, that the village having been attached for arrears of land revenue under s. 159 of Bombay Act V of 1879

BOMBAY LAND REVENUE ACT (BOMBAY ACT V OF 1879), s. 153—*concluded.*

on the 1st July 1880, the plaintiff had twelve years' time from the date of the attachment within which he could apply for the restoration of the village, under s. 162 of the Act. The order of forfeiture of the 6th January 1881 was, therefore, null and void. *Held* (*per* BIRWDOOD, J.) that the Collector had no power, under s. 16 of Bombay Act VII of 1867, to recover the cost of the punitive post from the *talukdar*, (1) as he was not an inhabitant of the village, and (2) because the cost could only be defrayed by a local rate imposed on the inhabitants of the district in which the punitive post was established. SAMALDAS BECHAR DESAI *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 16 Bom. 455

——, s. 155.

See s. 56.

[I. L. R. 15 Bom. 67

——, ss. 159, 162.

See s. 153.

[I. L. R. 16 Bom. 455

——, s. 187.

See s. 56.

[I. L. R. 15 Bom. 67

BOMBAY MUNICIPAL ACTS (BOMBAY ACTS III OF 1872 AND IV OF 1878).

——, s. 163.—*Compensation—Frontage land—Fifteen per cent. addition to compensation not allowed.*] A certain mosque in Bombay was abutted on the north, west and east by public streets. In December 1886, the Municipal Commissioner, pursuant to s. 166 of the Bombay Municipal Acts III of 1872 and IV of 1878, required the trustees of the mosque to set back the building on the said three sides for the purpose of improving the public streets. It was contended that the amount of compensation to be paid to the trustees was to be measured by the loss of rent which they would have received for certain rooms which they had proposed to build on the land in question:—*Held*, that the words of s. 163 of the Municipal Acts III of 1872 and IV of 1878 were intended to ensure compensation to the owner for every sort of damage, and not to restrict it to compensation for such damage as he might by his own arrangement reduce it to. Compensation becomes due under the section as soon as the Corporation takes possession, which is when the owner begins to build, and there being no words in the section to show a contrary intention, the compensation must be assessed according to the state of things then existing, and not upon the basis of what the owner may have it in his power to do towards diminishing the damage which would otherwise result to him. *Held*, also, that in cases of compensation granted under s. 163 of the Municipal Acts III of 1872 and IV of 1878, the addition of 15 *per cent.* cannot be allowed. MUNICIPAL COMMISSIONER FOR THE CITY OF BOMBAY *v.* PATEL HAJI MAHOMED JANU.

[I. L. R. 14 Bom. 292

BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888.)

———, ss. 143, 144.—*University buildings—Building occupied for charitable purposes—Charitable purposes—Statute 43 Eliz., c. 4.—Municipal taxation, exemption from.*] The following buildings occupied by the University of Bombay, *viz.*, the Sir Cowasji Jehanghir Hall, the Library and the Rajabai Tower, are not Government property, and are not included in the property for which Government pays a lump sum under s. 144 of the Bombay Municipal Act (III of 1888). The above buildings are exempt from taxation, being "buildings exclusively occupied for charitable purposes" within the meaning of cl. (*a*) of s. 143 of the Bombay Municipal Act (III of 1888). The words "charitable purposes" have acquired a technical meaning in the Presidency of Bombay, and in that sense they include all purposes within the meaning of Statute 43 Eliz, c. 4. UNIVERSITY OF BOMBAY *v.* MUNICIPAL COMMISSIONERS OF BOMBAY.

[I. L. R. 16 Bom. 217

———, s. 158.—*Tax—Drawback—General conditions prescribed by Standing Committee limiting right to drawback.*] Under s. 158 of the City of Bombay Municipal Act (Bombay Act III of 1888) the following general conditions were prescribed by the Standing Committee with reference to claims for drawback of the general property tax leviable in Bombay:—"(1) Except with the special sanction of the Commissioner, no claim for drawback shall be entertained unless submitted to the Commissioner not less than thirty days before the commencement of the half-year to which such claim relates. (2) Drawback of the one-fifth part of the general tax shall be sanctioned by the Commissioner in cases falling within either of the following classes and in no others: (*a*) *Chawls* or buildings let out for hire in single rooms either as lodging or godowns for the storage of goods. (*b*) Properties which, in the opinion of the Commissioner, are usually or frequently vacant either wholly or partially. (3) No sanction for drawback shall extend or apply to any floor on which trade or manufacture is carried on, or any goods are sold." The Commissioner having refused to sanction a drawback of the tax leviable on certain properties of the plaintiff on the ground that they did not fall within the terms of the above conditions, the plaintiff filed this suit. It was contended on his behalf that the second and third of the above conditions were bad, and that the Standing Committee could not by so-called general conditions limit or curtail the right given to tax-payers by s. 158:—*Held*, that the conditions prescribed by the Standing Committee were not *ultra vires*, and that the Commissioner was justified in refusing the drawback. GOVARDHANDAS GOCULDAS TEJPAL *v.* MUNICIPAL COMMISSIONERS OF BOMBAY.

[I. L. R. 17 Bom. 394

———, s. 527.—*Suit for damages against Municipal Commissioner—Notice of suit—What is sufficient notice.*] The plaintiffs were owners of a house consisting of a ground floor and upper story and measuring 77 feet in length. On the south side of the house was a gully, 3 feet 6 inches wide, separating it from another upper-storied house. The plaintiffs in this suit complained that in January 1891, the defendant by his servants dug a trench, 8 feet deep, along the whole length of the gully for the purpose of laying a drain pipe, and that the work was done so negligently that the plaintiffs' house was injured and became in such a dangerous condition that it had to be pulled down. The plaintiffs claimed Rs. 3,996 as damages. The defendant denied the negligence, and alleged that the work was not done by his servants or agents, but by a contractor. For the defendant it was contended that the notice of action given by the plaintiffs under s. 527 of the Bombay Municipal Act (III of 1888) was insufficient. The notice stated "that one *S L*, a contractor under you, and as such being your agent and servant, excavated a trench, &c." It was argued that this was not a good notice, as it only alleged a cause of action arising out of the acts of the defendant's servants and agents, and not out of the acts of a contractor:—*Held*, that the notice was sufficient. The section only required the notice to state with reasonable particularity the cause of action, and this was done. The individual by whom the damage was done was specified, and the acts which caused the damage were clearly set forth. DHONDIBA KRISHNAJI *v.* MUNICIPAL COMMISSIONERS OF BOMBAY.

[I. L. R. 17 Bom. 307

BOMBAY MUNICIPAL ACT (BOMBAY ACT III OF 1888), s. 527—*concluded.*

BOMBAY PORT TRUST ACT (BOMBAY ACT VI OF 1879),

———, ss. 43 and 62.

See SALE OF GOODS.

[I. L. R. 17 Bom. 62

BOMBAY REGULATION.

———, 1827—II.

See PENSIONS ACT, s. 4.

[I. L. R. 17 Bom. 224

———, s. 1.

See JURISDICTION OF CIVIL COURT—CASTE.

[I. L. R. 15 Bom. 599

See LIMITATION ACT, s. 26.

[I. L. R. 16 Bom. 592

———, 1827—V, s. 15, cl. 3.

See MORTGAGE—CONSTRUCTION.

[I. L. R. 15 Bom. 303

———, 1827—VIII.

See CERTIFICATE OF ADMINISTRATION—CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827.

[I. L. R. 14 Bom. 230

[I. L. R. 16 Bom. 708

BOMBAY REGULATION—*concluded.*

——, 1827—VIII, s. 2.

See SUBORDINATE JUDGE, JURISDICTION OF.

[I. L. R. 17 Bom. 230

——, 1827—XVI.

See SERVICE TENURE,

[I. L. R. 15 Bom. 13

——, 1827—XVII.

See MAMLATDAR, JURISDICTION OF.

[I. L. R. 14 Bom. 372

——, 1827—XXIX, appeal under—

See SERVICE TENURE.

[I. L. R. 17 Bom. 431

——, ss. 4, 6.

See PENSIONS ACT, s. 4.

[I. L. R. 17 Bom. 224

BOMBAY REVENUE JURISDICTION ACT (X OF 1876), s. 4.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[I. L. R. 17 Bom. 681

——, s. 4.—*Limitation—Limitation Act* 1877, *Art.* 120—*Attachment for arrears of land revenue—Suit for declaration that order of forfeiture was illegal—Bombay District Police Act (Bombay Act VII of* 1867), *s.* 4—*Punitive police post.*] The plaintiff was the *talukdar* of the village of *K*. At the end of the revenue year 1878-79, *i.e.*, on 31st July 1879, the plaintiff was a defaulter in respect of the assessment payable to Government for that year. In November, 1879, a punitive police post was established in the village, under s. 16 of Bombay Act VII of 1867, on account of the turbulent conduct of the inhabitants. Between January and April, 1880, the Collector sold certain property of the *talukdar* for arrears of revenue, and realized by the sale a sum of Rs. 1,608-12-8. This sum was more than sufficient to cover the arrears due for 1878-79 as well as the assessment payable for 1879-80, but the Collector, after deducting the arrears due for 1878-79, applied the rest of the sale-proceeds towards the payment of the cost of the punitive post. The assessment for 1879-80 having remained unpaid, the village was attached on the 1st of July 1880, under s. 159 of the Bombay Land Revenue Code (Act V of 1879). The attachment was followed on the 6th January 1881, by an order declaring the village to be forfeited under s. 153 of the Code. In 1886 the plaintiff filed the present suit against Government to recover possession of the village, and for a declaration that the order of forfeiture was illegal and *ultra vires*. The defendant pleaded (*inter alia*) that the suit was barred under s. 4, cl. (*c*) of the Bombay Revenue Jurisdiction Act (X of 1876), that it was also barred by limitation:—*Held*, also, that the plaintiff's claim for a

BOMBAY REVENUE JURISDICTION ACT (X OF 1876), s. 4—*concluded.*

declaration that the order of forfeiture was illegal was not barred by s. 4, cl. (*c*) of Act X of 1876, as the order of forfeiture could not be considered "a proceeding for the realization of land revenue." The proceeding authorized by law for the realization of land revenue, *i.e.*, the attachment of the village, having been taken, no other proceeding could legally be taken, as against the plaintiff, till the expiration of twelve years from the date of the attachment. *Held*, further, that the claim for a declaration that the order of forfeiture was illegal was not time-barred, as it was governed by Art. 120 of the Limitation Act (XV of 1877). SAMALDAS BECHAR DESAI *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 16 Bom. 455

——, s 15.

See SUBORDINATE JUDGE, JURISDICTION OF.

[I. L. R. 15 Bom. 441

BOND.

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED.

[I. L. R. 13 All. 330

See INTEREST—STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE.

[I. L. R. 15 All. 232

[I. L. R. 19 Calc. 392

[I. L. R. 14 Bom. 200

See MORTGAGE—FORM OF MORTGAGES.

[I. L. R. 14 All. 162

See STAMP ACT, 1879, s. 3.

[I. L. R 13 Mad. 147

[I. L R. 14 Mad. 18

[I. L. R. 15 Mad. 193

[I. L. R. 14 Bom. 511

——, Assignment of—

See RIGHT OF SUIT—CONTRACTS OR AGREEMENTS.

[I. L. R. 14 Mad. 473

——, Attestation of—

See CONTRACT—ALTERATION OF CONTRACT—ALTERATION BY PARTY.

[I. L. R. 15 Bom. 44

——, Endorsement on—

See STAMP ACT, 1879, s. 13.

[I. L. R. 17 Bom. 687

—— Registered and payable by instalments—

See LIMITATION ACT, 1877, ART. 116.

[I. L. R. 18 Calc. 508

BOND—*concluded.*

——, Suit on—

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R. 14 Mad. 377

See LIMITATION ACT, 1877, ART. 66.

[I. L. R. 14 All. 162

See LIMITATION ACT, 1877, ART. 147.

[I. L. R. 15 Bom. 183

See VALUATION OF SUIT—APPEALS.

[I. L. R. 13 Mad. 508

BOOKS.

See EVIDENCE—CIVIL CASES — MISCELLANEOUS DOCUMENTS—BOOKS.

[I. L. R. 15 Mad. 241

BOUGHT AND SOLD NOTES.

See CONTRACT—BOUGHT AND SOLD NOTES.

[I. L. R. 20 Calc. 854

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.

[I. L. R. 14 Bom. 102

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[I. L. R. 17 Calc. 173

See STAMP ACT, 1879, SCH. I, ART. 46.

[I. L. R. 14 Bom. 102

BOUNDARIES.

——, Dispute as to—

See BENGAL TENANCY ACT, S. 103.

[I. L. R. 19 Calc. 641, 643

See ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.

[I. L. R. 19 Calc. 660

See SPECIAL APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—LOCAL INVESTIGATION.

[I. L. R. 21 Calc. 504

——, Proof of—

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 19 Calc. 312

BOUNDARY.

——, Question of—

See BENGAL TENANCY ACT, S. 158.

[I. L. R. 17 Calc. 277

BOUNDARY—*concluded.*

—. *Question of boundary — Evidence in cases of disputed boundary—Onus probandi.*] In questions of boundary, especially where the dividing line in dispute runs through waste lands which have not been the subject of definite possession, the rule as to the burden of proving the affirmative is not applicable. The litigants are in the position of counter-claimants, and both parties are bound to do what they can to aid the Court in ascertaining the true line. LUKHINARAIN JAGADEB *v.* JADU NATH DEO.

[I. L. R. 21 Calc. 504

[L. R. 21 I. A. 39

BOUNDARY-MARKS.

See BOMBAY LAND REVENUE ACT, S. 56.

[I. L. R. 15 Bom. 67

BREACH OF THE PEACE.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE.

[I. L. R. 20 Calc. 513, 520

BRIBE, (OFFER OF,) TO PUBLIC OFFICER.

See ACCOMPLICE.

[I. L. R. 14 Bom. 331

BROACH AND KAIRA ENCUMBERED ESTATES ACT (XXI OF 1881).

See PUBLIC OFFICER.

[I. L. R. 14 Bom. 395

BUDDHIST LAW.

See BURMESE LAW—DIVORCE.

[I. L. R. 19 Calc. 469

BUILDINGS.

——, Erection of.

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY—ERECTION OF BUILDINGS.

[I. L. R. 15 Bom. 71

[I. L. R. 16 Mad. 407

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[I. L. R. 17 Bom. 736

——, Occupied for charitable purposes.

See BOMBAY MUNICIPAL ACT (III of 1888), SS. 143, 144.

[I. L. R. 16 Bom. 217

BULL SET AT LARGE IN ACCORDANCE WITH HINDU RELIGIOUS USAGE.

See RELIGION, OFFENCES RELATING TO.

[I. L. R. 17 Calc. 852

See THEFT.

[I. L. R. 17 Calc. 852

BURMAH COURTS ACT (IX OF 1889), ss. 50 and 69.

See INSOLVENT ACT, s. 50.

[I. L. R 19 Calc. 605

BURMESE LAW—DIVORCE.

—*Burman Buddhists, Law as to Divorce among —Husband and wife—Buddhist Law—Dhammathats, Authority of—Menu Kyay, Authority of —Desertion—Procedure.*] In a suit for divorce instituted by a Burman husband on the ground that his wife had deserted him for no reason whatever, and had been living separate for the past eight months, refusing to resume cohabitation with him (there being no charge against the wife of misconduct affecting morality or of any bad habits), the wife pleaded in defence that the above ground was, under Buddhist Law, no ground for a divorce, and further pleaded the conduct of the petitioner as a justification for her refusal to cohabit with him. No division of property had taken place between husband and wife:—*Held*, upon a reference to the High Court, that upon the law as administered among Buddhists the petitioner was not entitled to a divorce. If the plaintiff in a suit for divorce governed by the above law establishes any of the grounds which the Dhammathats recognize as good grounds for a divorce, he will be entitled to a divorce. The Dhammathats contemplate grounds justifying a divorce other than those mentioned in the judgment of the Special Court in *Nga Nwe* v. *Mi Su Ma*, *viz*, other than matricide, parricide, killing, stealing, shedding the blood of a Buddha, *rahan*, heresy, and adultery. A desertion, properly so-called, by the wife is a good ground for divorce by the husband, provided that during the period of one year prescribed by the *Menu Kyay* (Bk. v, ch. 17) the husband has not supplied anything to the wife. Suits for divorce between Burman Buddhists, being suits of a civil nature not governed by the Indian Divorce Act, should be commenced by a plaint and not by a petition. The decision of the Special Court in *Nga Nwe* v. *Mi Su Ma* observed upon. Passages in the *Menu Kyay* Dhammathat cited and commented upon. MOUNG TSO MIN *v.* MAH HTAH.

[I. L. R. 19 Calc. 469

BYE-LAWS OF BOMBAY PORT TRUST.

See SALE OF GOODS.

[I. L. R. 17 Bom. 62

CALCUTTA MUNICIPAL ACT (BENGAL ACT IV OF 1876), ss. 280, 281, 282.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 2.

[I. L. R. 21 Calc. 528

———, s. 357.—*Limitation—Accrual of right to sue—Suit for damages—Notice in writing—Continuing damage.*] The plaintiff in April 1888 sued the defendants for damages for injuries caused by the defendants' works to his house. On the case coming on for hearing it appeared that the notice of action served upon the defendants was defective in form, and the suit was on the 11th December 1888 dismissed with liberty to the plaintiff to bring a fresh suit on the same cause of action. On the 15th December 1888 the plaintiff served the defendants with a fresh notice, and on the 15th March 1889 instituted the present suit. It appeared from the plaintiff's evidence that in the beginning of December 1888 the house had been reduced to such a condition that it was incapable of sustaining further damage:—*Held*, that the right to sue accrued to the plaintiff upon the happening of damage by reason of the subsidence arising from the defendants' act; that the plaintiff had not shown that a right to sue upon which the suit could be maintained had accrued within three months before the institution of the suit as required by s. 357 of the Municipal Act (IV of 1876), and within the terms of the notice of the 15th December; and that the suit was therefore barred. *Darley Main Colliery Co.* v. *Mitchell*, L. R. 11 App. Ca., 127; L. R. 14 Q. B. D. 125, distinguished. *Per* PIGOT, J.—*Semble* that, as to whether, under s. 357, damage arising out of a subsidence referred to in the notice, but arising after the date of the notice, could be recovered without fresh notice and fresh suit, a liberal construction should be placed upon s. 357 as to the requirements of the notice. DWARKA NATH GUPTO *v.* CORPORATION OF CALCUTTA.

[I. L. R. 18 Calc. 91

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BENGAL ACT II OF 1888.)

———. s. 2, and ss. 252, 256, 257, 265—*Calcutta Municipal Act* (*Bengal Act IV of* 1876), *ss.* 280, 281, 282—*Basti land—Urgency—Trespass—Suit for damages.*] S. 2, para. 5, of Bengal Act II of 1888 the Calcutta Municipal Consolidation Act, by which Act the former Calcutta Municipal Act (Bengal Act IV of 1876) is repealed provides that pending proceedings which may have been commenced under any repealed Act shall be deemed to have been *commenced* under the new Act; but though commenced before the passing of the new Act they must, to be effectual, be continued under its provisions, and can only be used to enforce rights and powers in existence at the time when it is sought to enforce them. Where therefore before the passing of the Act II of 1888, and whilst Act IV of 1876 was in force, the Municipality took measures under the latter Act to cleanse *basti* land which was in an insanitary state, and notwithstanding the passing of Act II of 1888, which provided totally different preliminaries and procedure for the purpose, continued the improvements practically under the Act of 1876:—*Held*, that even if the proceedings could be considered, under s. 2 of Act II of 1888, to have been commenced under the new Act, the action of the Municipality amounted to trespass for which they were liable in damages to the owner of the land. CORPORATION OF CALCUTTA *v.* JADU LALL MULLICK.

[I. L. R. 12 Calc. 523

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BENGAL ACT II OF 1888) —*continued.*

——, s. 8.

See s. 31.

[I. L. R. 19 Calc. 198

——, ss. 11 and 12.

See s. 31.

[I. L. R. 19 Calc. 195 note

——, ss. 24, 25.

See s. 31.

[I. L. R. 19 Calc. 198

1.—s. 31, and ss. 24, 25.—*Municipal election—Joint-family representation for voting purposes—Judicial discretion of Chairman as to list of candidates—Franchise.*] S. 31 of Bengal Act II of 1888 does not impose on the Chairman of the Municipality the duty of exercising any judicial discretion or taking any judicial action with regard to the list of candidates prepared under that section. In this case therefore a rule which had been granted on the application of one of the candidates calling on the Chairman to show cause why the name of another of the said candidates should not be removed from the list, he being merely the manager appointed to vote on behalf of a joint-family under s. 24 and not qualified to be elected as a Commissioner, was discharged by TREVELYAN, J. IN THE MATTER OF MUTTY LAL GHOSE.

[I. L. R. 19 Calc. 192

2.—s. 31, and ss. 11, 12.] In a case in 1882 in which a similar rule had been granted calling on the Chairman of the Municipality to show cause why the name of R. J. Mittra should not be expunged from the list of candidates for election as municipal commissioners, he being merely the manager and trustee of certain *debutter* property, having no beneficial interest in such property and being ineligible for election as a commissioner as not coming under s. 11 or 12 of the Municipal Act, NORRIS, J., made the rule absolute, and directed the Chairman to expunge the name from the list of candidates. IN THE MATTER OF RAJENDRA LALL MITTER.

[I. L. R. 19 Calc. 195 note

3.—s. 31, and ss. 8, 24, 25.] In another case in 1889, where a rule had been granted calling on the Chairman to show cause why he should not forbear from counting certain votes given in favour of R. B. Dass, one of the candidates at a municipal election, which votes were those of persons who were merely agents appointed under ss. 24 and 25 of the Act by joint-families or firms to vote, on the ground that they possessed none of the qualifications required by s. 8, and were not members of such joint-families or firms, and therefore had no right to vote. NORRIS, J., whilst thinking that the Legislature intended that a joint-family or firm should be represented by one of their own members, and that the omission so to provide was one which might well be taken into consideration by the Legislature, *held*, that he could not put an interpretation on the Act which would involve the addition to the Act of words which the Legislature had left out, and therefore discharged the rule. IN THE MATTER OF THE ELECTION OF MUNICIPAL COMMISSIONERS FOR WARD NO 10, CALCUTTA.

CALCUTTA MUNICIPAL CONSOLIDATION ACT (BENGAL ACT II OF 1888), s. 31—*concluded.*

[I. L. R. 19 Calc. 198

——, s 412, and ss. 417, 419—*Bye-laws (C)* 4, 6, 7—*Permit for removal of offensive matter or rubbish—Failure to take out permit—Continuation of offence.*] Where a milkman who had been convicted for not taking out before the 1st December 1891 a half-yearly permit for the half-year ending the 31st March 1892, in accordance with bye-laws (*C*) 4, 6, made by the Municipal Commissioners of Calcutta, under the provisions of s. 412 of Bengal Act II of 1888, and was charged with continuing his offence by failing for the space of seven days subsequent to the said conviction to take out the permit whilst still carrying on his business of a milkman:—*Held*, that the offence of which he had been convicted of not taking out a permit on or before 1st December 1891, which was complete when that day had passed, could not be continued by his omission to take out a permit. *Quære*—Whether it is competent for the Municipal Commissioners, by the bye-laws made under s. 412, to create the duty or obligation of taking out a permit, and whether under s. 417 disobedience to such bye-laws constitutes a punishable offence. CORPORATION OF CALCUTTA *v.* JADUB DOOLEY.

[I. L. R. 20 Calc. 605

CALCUTTA POLICE ACT (BENGAL ACT IV OF 1866).

——, s. 5 and s. 46.—*Deputy Commissioner of Police, powers of—Search-warrants in gaming cases.*] A Deputy Commissioner of Police appointed under s. 5 of the Calcutta Police Act has all the powers of the Commissioner of Police, subject to the control of that officer, that is to say, the Commissioner may, at any time, set aside any of his orders, or he may give either in writing or verbally or otherwise any special direction with regard to any matter. Apart from such special direction, however, any act of a Deputy Commissioner, provided it be within the powers of the Commissioner is valid, and no instructions, either in writing or otherwise, or general or in regard to specific acts, are necessary to render such act valid. A Deputy Commissioner has power to issue search-warrants under s. 46 of the Act. FORSYTH *v.* WILSON.

[I. L. R. 20 Calc. 670

CANARA FOREST RULES, 7, 12 & 23.

See MADRAS FOREST ACT, s. 26.

[I. L. R. 13 Mad. 21.

CANTONMENT ACT (BOMBAY ACT III OF 1867), s. 11.

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS.

[I. L. R. 14 Bom. 286

CANTONMENT ACT (III OF 1880), REPEAL OF.

See CANTONMENTS ACT XIII (OF 1889).

CANTONMENTS ACT (XIII of 1889).

——, s. 2, cl. 2, and s. 10.—*Jurisdiction—Order of the Local Government to the contrary—Pecuniary limits of jurisdiction of Cantonment Court—Cantonments Act (III of 1880), repeal of.*] Under s. 10 of the Cantonments Act (XIII of 1889) the Cantonment Judge has jurisdiction up to Rs. 500 only, in the absence of any order of the Local Government to the contrary. In a suit filed in the Court of the First Class Subordinate Judge of Belgaum, in its small cause jurisdiction, to recover Rs. 172 as arrears of rent, a question having arisen whether that Court, the pecuniary limit of whose jurisdiction as the Court of Small Causes was Rs. 500, or the Court of the Belgaum Cantonment Magistrate invested with small cause powers, had jurisdiction to entertain the suit:—*Held*, that the Cantonment Court alone had jurisdiction. By Notification No. 2305, published at page 314 of the *Bombay Government Gazette* for 1887, the pecuniary limit of the (Belgaum) Cantonment Court is declared to be Rs. 200; and the declaration which was made under Act III of 1880 [which is an Act repealed by the Cantonments Act (XIII of 1889)] is kept alive by s. 2, cl. 2, of the Cantonments Act, and it is, therefore, such an order of the Local Government as is contemplated by s. 10 of Act XIII of 1889. GULABCHAND MOTIRAM *v.* GEORGES.

[I. L. R. 16 Bom. 702

CANTONMENT COMMITTEE, SUIT AGAINST—

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS.

[I. L. R. 14 Bom. 286

CARRIERS.

See RAILWAY COMPANY.

[I. L. R. 15 Bom. 537

[I. L. R. 17 Bom. 417, 723

1.—*Carriers Act (III of 1865), ss. 6, 8—Negligence — Accident, loss by — Special contract—Divisibility of contract.*] A flat belonging to the defendants, carrying goods belonging to the plaintiff, was lost by coming into contact with a snag in the bed of a certain river, the existence of which snag could not have been ascertained by any precautions on the part of the defendants. The goods were received for carriage by the defendants under conditions printed on the back of "forwarding note" signed by the plaintiff, by one of which conditions the defendants protected themselves from liability against accident of certain particular kinds, and "from any accident, loss or damage resulting from negligence, &c.":—*Held*, that the loss was not occasioned by the negligence of the defendants; that the forwarding note "was a special contract" within the meaning of the Carriers Act; that the clause purporting to protect the defendants from negligence was bad as being in contravention of the Carriers Act; but that, nevertheless, the contract was not thereby rendered wholly bad, but was divisible, being good so far as it provided that the defendants were not to be liable for loss by accident, but bad so far as it provided that they should not be liable for negligence. INDIA GENERAL STEAM NAVIGATION CO. *v.* JOYKRISTO SHAHA.

[I. L. R. 17 Calc. 39

2.—*Carriers by railway, liability of—Railway Act (IV of 1879), s. 210—Loss by negligence—Common carriers—Insurer—Act of God.*] A carrier by railway is, under Act IV of 1879, liable as an insurer of goods entrusted to him, and not merely for loss occasioned by negligence. CHOGEMUL *v.* COMMISSIONERS FOR THE IMPROVEMENT OF THE PORT OF CALCUTTA.

[I. L. R. 18 Calc. 427

3.—*Common Carriers—Contract Act (IX of 1872), ss. 148, 151, 152—Carrier's Act (III of 1865)—Insurers—Railway Acts (IV of 1879) and (IX of 1890)—Bailees.*] That the duties and liabilities of a common carrier are governed in India by the principles of the English common law on that subject, however introduced, has been recognized in the Carriers Act (III of 1865). His responsibility to the owner does not originate in contract, but is cast upon him by reason of his exercising this public employment for reward. His liability as an insurer is an incident of the contract between him and the owner not inconsistent with the provisions of the Contract Act; and the Law of Carriers partly written and partly unwritten remained as before that Act. The Railway Acts of 1879 and 1890 reduced the responsibility of carriers by railway to that of bailees under the Contract Act, but this does not affect the construction of the law relating to common carriers and the Act of 1865. Notwithstanding some general expressions in the chapter on bailments, a common carrier's responsibility is not within the Contract Act 1872. The decision of the Calcutta High Court in *Moothoora Kant Shaw* v. *India General Steam Navigation Co.*, I. L. R. 10 Calc. 166, approved, and that of the Bombay High Court in *Kaverji Tulsidas* v. *G. I. P. Railway Co.*, I. L. R. 3 Bom. 109, not supported. IRRAWADDY FLOTILLA CO. *v.* BUGWANDAS.

[I. L. R. 18 Calc. 620

[L. R. 18 I. A. 121

4.—*Railway Act (IV of 1879), s. 11—Railway Company, liability of—Carriage of gold and silver, &c.—Insurance, Increased charge for.*] Plaintiffs delivered a box of coins for carriage to the servants of a railway, and declared the nature of the contents at the time of delivery. No demand was made on the part of the railway for any

CARRIERS—*concluded.*

increased payment for insurance. The box having miscarried:—*Held*, on the authority of *The Great Northern Railway Company* v. *Behrens*, 7 H. & N. 950, that the railway were liable for the loss. SECRETARY OF STATE FOR INDIA *v.* BUDHU NATH PODDAR.

[I. L. R. 19 Calc. 538

CARRIERS ACT (III OF 1865).

See CARRIERS.

[I. L. R. 17 Calc. 39

[I. L. R. 18 Calc. 520

See RAILWAY COMPANY.

[I. L. R. 17 Bom. 417

CASTE.

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[I. L. R. 16 Bom. 552

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[I. L. R. 20 Calc. 425

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[I. L. R 15 Mad. 111

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[I. L. R. 13 All. 98

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[I. L. R. 17 Bom. 510

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[I. L. R. 18 Calc. 652

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[I. L. R. 15 Bom. 599

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[I. L. R. 15 Mad. 123

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[I. L. R. 18 Calc. 652

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[I. L. R. 14 Bom. 512

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[I. L. R. 14 Mad. 386

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See CASES UNDER RES JUDICATA—CAUSE OF ACTION.

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[I. L. R. 16 Mad. 405

(1) CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827.

1.—*Effect of certificate under Regulation VIII of* 1827, *s.* 7, *cl.* 2—*Representative of estate.*] A certificate of administration granted under Regulation VIII of 1827 only indicates the person who for the time being is in the legal management of the property in respect of which it is granted, but does not constitute the holder of the certificate a representative of the estate for the purpose of distributing it amongst his co-sharers. KESHAV JAGANNATH *v.* NARAYAN SAKHARAM.

[I. L. R. 14 Bom. 236

CERTIFICATE OF ADMINISTRATION—*continued.*

(1) CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827—*concluded.*

2.—*Bombay Regulation VIII of* 1827, *s.* 9—*Administrators appointed by the Court—Order to deliver property—"Determined"—"Finally determined"—Right of appeal—Civil Procedure Code (Act XIV of* 1882), *s.* 622—*Superintendence of High Court—Illegal exercise of jurisdiction.*] S. 9 of Regulation VIII of 1827 empowers the District Court to make an order directing the administrators appointed under the Regulation to make over the property, when "it has been determined" between the rival claimants who is the heir of the deceased; but, to give full effect to the object of the Regulation, the word "determined" must be understood "finally determined." Where the Judge considered that he was bound to make an order directing administrators appointed under Regulation VIII of 1827 to make over the property of the deceased to one of the rival claimants who was judicially declared to be the heir of the deceased:—*Held* that so long as the party against whom the decision in the matter of the rival claims was given, had a right of appeal, the order of the Judge was one which he could not make under the Regulation, and that in exercising his jurisdiction under the Regulation he had exercised it illegally, and that being so, the High Court had power, under s. 622 of the Civil Procedure Code, to interfere in the exercise of its extraordinary jurisdiction. ISHVAMBHAR PANDIT *v.* VASUDEV PANDIT.

[I. L. R. 16 Bom 708

(2) RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

3.—*Succession Certificate Act (VII of* 1889), *s.* 4—*Assignee of mortgaged property—"Debtor"—Certificate to collect debts—Mortgagee asking for sale of mortgaged property.*] The assignee of a property mortgaged is not a debtor within the meaning of s. 4, Act VII of 1889; and a mortgagee praying for the sale of the property, and asking for no relief personally against the mortgagor, is not bound to take out a certificate under that Act before he can obtain a decree. *Raghu Nath Shaha* v. *Poresh Nath Pundari*, I. L. R. 15 Calc. 54, applied in principle. *Janaki Ballav Sen* v. *Hafiz Mahomed Ali Khan*, I. L. R. 13 Calc. 47, distinguished. KANCHAN MODI *v.* BAIJ NATH SINGH.

[I. L. R. 19 Calc. 326

4.—*Succession Certificate Act (VII of* 1889), *s.* 4—*Execution of decree—Application for execution by legal representative without certificate.*] S. 4 of the Succession Certificate Act, 1889, merely provides that the Court shall not proceed upon an application of a person claiming to be entitled to execute a decree, except on the production of a certificate or other authority of a like nature. But it does not follow from that section that an application might not be made without the production of a certificate, the certificate being supplied during the pendency of the proceedings.

CERTIFICATE OF ADMINISTRATION—*continued.*

(2) RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued.*

Janaki Ballav Sen v. *Hafiz Mahomed Ali Khan*, I. L. R. 13 Calc. 47, followed. BROJO NATH SURMA *v.* ISSWAR CHUNDRA DUTT.

[I. L. R. 19 Calc. 482

5.—*Succession Certificate Act (VII of* 1889), *s.* 4—*Suit by undivided son of deceased creditor—Suit on bond.*] A Hindu is not entitled to sue on a bond executed in favour of his undivided father, deceased, without the production of a certificate under Act VII of 1889, unless it appears on the face of the bond that the debt claimed was due to the joint family, consisting of the father and the son. VENKATARAMANNA *v.* VENKAYYA.

[I. L. R. 14 Mad. 377

6.—*Succession Certificate Act (VII of* 1889), *s.* 4 (*b*)—*Application for execution.*] Act VII of 1889, s. 4, cl. (*b*), does not apply to applications to execute decrees which were pending at the date of the passing of the Act, but it refers to applications made after the Act came into force. RAMA RAU *v.* CHELLAYAMMA.

[I. L. R. 14 Mad. 458

7.—*Succession Certificate Act (VII of* 1889), *s.* 4—*Suit by assignee of a debt due to a deceased creditor.*] One *S* lent a sum of money to the defendant and died, leaving an adopted son, who assigned the debt to the plaintiff. Neither the plaintiff nor his assignor obtained a certificate under Act VII of 1889. The plaintiff now sued to recover the amount of the assigned debt:—*Held*, that the plaintiff was not entitled to recover, no certificate having been obtained under Act VII of 1889. KARUPPASAMI *v.* PICHU.

[I. L. R. 15 Mad. 419

8.—*Succession Certificate Act (VII of* 1889), *s.* 4 *sub.-s.* 1, *cl.* (*b*)—*Proceedings in execution taken before, and pending at the time at which the Act came into force.*] Cl. (*b*) of sub-section 1 of s. 4 of the Succession Certificate Act (VII of 1889) does not apply to applications or proceedings in execution of a decree made before and pending at the time at which the Act came into force. The application therein mentioned must mean one made after the Act is in force, and the proceeding of the Court in execution must be an initial one under that application, and not one in continuation of proceedings taken on applications made before the Act came into force. BALUBHAI DAYABHAI *v.* NASAR BIN ABDUL HABIB FAZLY.

[I. L. R. 15 Bom. 79

9.—*Succession Certificate Act (VII* 1889), *s.* 4—*Act XXVII of* 1860, *s.* 2.] The plaintiffs brought a suit to recover a certain sum of money due on a mortgage-bond executed by defendant No. 1 in favour of their (the plaintiffs') deceased father by the sale of the mortgaged property, as well as from the defendants personally. Some time after the institution of the suit the parties

CERTIFICATE OF ADMINISTRATION—*continued.*

(2) RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*continued.*

compromised the claim. The plaintiffs applied to the Court to pass a decree in terms of the compromise. The Subordinate Judge referred the question whether a certificate under Act VII of 1889 was necessary before he could pass a decree as applied for:—*Held*, that a certificate was necessary. S. 4 of Act VII of 1889 distinctly and peremptorily forbids any Court from passing a decree against a debtor of a deceased person for payment of his debt, except on production, by the person claiming, of probate or letters of administration. A decree would be "against the debtor" when passed, although he consented to it. SANTAJI KHANDERAO *v.* RAVJI.

[I. L. R. 15 Bom. 105

10.—*Succession Certificate Act, s.* 4—*Application of Act—Decree passed prior to Act—Execution of decree after the passing of Act—Pending proceeding.*] S. 4, sub-section 1, cl. (*b*) of Act VII of 1889 is not confined to the execution of decrees passed subsequently to the coming into operation of the Act:—*Held*, that the heir of a judgment-creditor applying for execution of the decree after Act VII of 1889 came into operation was bound to obtain a certificate of heirship under that Act. The fact that he had already on two occasions presented a *darkhast* which had been disposed of before the Act came into force, did not affect the question. *Balubhai Dayabhai* v. *Nasar bin Abdul Habib Fazly*, I. L. R. 15 Bom. 79, referred to. CHIMNIRAM UMAJI *v.* HANMANTA.

[I. L. R. 15 Bom. 265

11.—*Succession Certificate Act, s.* 4—*Debtor of a deceased person—Sale of deshmukhi hak—Vesting of the hak in the vendee—Death of the vendee—Recovery of the hak by the vendors — Suit for damages—Money had and received.*] S. 4 of Act VII of 1889 (Succession Certificate Act) prevents a Civil Court from passing a decree against a debtor of a deceased person for payment of his debt, except on production of one or other of the documents there mentioned. *T* and others, who were entitled to recover from the Government treasury a certain sum on account of *deshmukhi hak*, sold it to *B* in 1873 in consideration of a debt due to him. *B* died in the year 1884. In the year 1886 *T* and his co-vendors themselves recovered from the Government the said sum, which, under the sale-deed, was recoverable by *B*. In a suit brought by the heirs of *B* to recover the amount from *T* and the other executants of the sale-deed:—*Held*, that a certificate under Act VII of 1889 was not required to enable the plaintiffs to sue. By the sale in 1873 the property in the amount of the *hak* sold had become vested in the deceased before his death, but the defendants never became his debtors at any time, as the amount so assigned was not received by them from the revenue authorities till after his death in 1884. For wrongfully receiving it in 1886, the defendants could either be sued in damages by the persons entitled to receive the *hak*, or treated as their debtors and sued for money had and received to their use. NARAYAN BHAU BARTAKE *v.* TATIA GANPATRAO DESHMUKH.

[I. L. R. 15 Bom. 580

12.—*Succession Certificate Act (VII of* 1889)—*Death of one of two undivided brothers—Suit by surviving brother and manager for debt due to family—Filing award in suit referred to arbitration.*] *R* and *N* were undivided brothers; *N* was the elder, but *R* was the manager of the family property. *N* died, leaving a widow and three sons, and after his death *R* sued the defendant to recover certain debts due to the family. The parties referred the dispute to three arbitrators appointed by them without the intervention of the Court and applied to the Court to have the arbitrators' award filed. A question having arisen whether the award could be filed without a succession certificate under Act VII of 1889:—*Held*, that there was nothing in Act VII of 1889 to prevent the award being filed without a certificate. RAMCHANDRA HARI *v.* BAPU.

[I. L. R. 16 Bom. 240

13.—*Succession Certificate Act, s.* 4—*Undivided brothers—Decree obtained by one of two undivided brothers—Right of surviving brother to execute decree—Certificate of heirship.*] A decree was obtained by one of two undivided brothers. He died, and the surviving brother applied for execution of the decree:—*Held*, that if the debt was in its nature a family debt, the right to execute the decree would have devolved on him by survivorship, and not as the heir of his deceased brother, and in that case no certificate of heirship under s. 4 of Act VII of 1889 would be necessary; but if, on the contrary, the debt was part of the separate property of the deceased, the applicant could only execute the decree as heir, and must, in that case, obtain a certificate to enable him to proceed. RAGHAVENDRA MADHAV *v.* BHIMA.

[I. L. R. 16 Bom. 349

14.—*Succession Certificate Act (VII of* 1889), *s.* 4—*Death of plaintiff—Suit continued by legal representative before representation taken out—Civil Procedure Code (Act XIV of* 1882), *s.* 50.] Where the original plaintiff dies, the suit, since the passing of Act VII of 1889, if not under s. 50 of the Civil Procedure Code, may be continued by his legal representative, although the latter has not taken out administration to the original plaintiff's estate. All that the defendant can insist on in such a case is that representation shall be complete before decree. TORRE-GROSA VASQUEZ *v.* PRAGJI HURJI.

[I. L. R. 16 Bom. 519

15.—*Succession Certificate Act (VII of* 1889), *s.* 4.] Where a party applied for leave to sue *in formâ pauperis* to recover assets forming part of the estate of a deceased person, and his application was dismissed on the ground that he produced on

CERTIFICATE OF ADMINISTRATION—*—continued.*

(2) RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE—*concluded.*

certificate under Act VII of 1889:—*Held*, that the application was wrongly dismissed, no certificate being necessary for such a suit. KAMMATHI *v.* MANGAPPA.

[I. L. R. 16 Mad. 454

16.—*Succession Certificate Act (VII of 1889), s. 4—Act coming into force while suit was pending, effect of, on suit—Suit for foreclosure or sale—Mortgage by conditional sale.*] On 28th March 1871, the defendant's father borrowed a sum of money from the plaintiff's father and placed him in possession of certain land under an instrument of mortgage, which provided for the application of the usufruct in liquidation of the interest and then in reduction of the principal; the instrument also contained a covenant for the repayment, in four years, of the balance that might then be due by the mortgagor and a stipulation that, on default, the mortgagor was to surrender the property to the mortgagee as if it had been sold to him. In 1874, the mortgagor resumed possession without discharging the mortgage-debt. The mortgagee having died, his sons, on 14th April 1888, filed the present suit on the mortgage and prayed for a decree for foreclosure or sale. During the pendency of the suit the Succession Certificate Act of 1889 came into operation, but the plaintiffs obtained no certificate under it:—*Held*, that the plaintiffs were not precluded from obtaining a decree by reason of their not having obtained a certificate under the abovementioned Act. AMMANNA *v.* GURUMURTHI.

[I. L. R. 16 Mad. 64

17.—*Succession Certificate Act (VII of 1889), s. 4—Mohunt, decree obtained by, on behalf of muth—Endowment, representation of.*] A decree in favour of a deceased mohunt for costs incurred in proceedings carried on by him on behalf of the *muth* may be executed by the successor and representative of the mohunt without probate, certificate, or letters of administration being obtained. JOGENDRONATH BHARATI *v.* RAM CHUNDER BHARATI.

[I. L. R. 20 Calc. 103

(3) NATURE AND FORM OF CERTIFICATE.

18.—*Succession Certificate Act (VII of 1889)—Grant of a joint certificate.*] Under the provisions of the Succession Certificate Act (VII of 1889), a joint certificate to recover debts cannot be granted. *Madan Mohan* v. *Ramdial*, I. L. R. 5 All. 195, and *Jamnabai* v. *Hastubai*, I. L. R. 11 Bom. 179, referred to. LONACHAND GANGARAM MARWADI *v.* UTTAMCHAND GANGARAM MARWADI.

[I. L. R. 15 Bom. 684

(4) PROCEDURE.

19.—*Succession Certificate Act (VII of 1889), ss. 1, 4 and 6—Question of validity of will—Remand, order of.*] *K F* and *K A* applied to the District Court for a certificate of administration under s. 6 of Act VII of 1889 to enable them to collect the debts due to one *P*, deceased. They alleged that *P* had made a will appointing them trustees to collect his debts. *B* also applied for a certificate on the ground that she was *P's* heir. She disputed the genuineness of the alleged will. The District Judge rejected both the applications on the ground that the validity of the will could not be settled in a summary proceeding. On appeal the High Court remanded the matter for rehearing, holding that the District Judge had jurisdiction to decide upon the genuineness of the will. At the rehearing *B* withdrew her application, but the Judge held that as *K F* and *K A* claimed a certificate as executors of the will and not as heirs, they should take out probate of the will. He, therefore, refused their application. On appeal to the High Court, *held*, that the duty of the District Judge in carrying out the remand order of the High Court was confined exclusively to determining whether the applicants or the heir was entitled to the certificate, and that he could not refuse the certificate simply because the applicants might have asked for probate, as the case did not fall under cl. 4 of s. 1 of Act VII of 1889. KALIDAS FAKIRCHAND *v.* BAI MAHALI.

[I. L. R. 16 Bom. 712

CERTIFICATE OF ATTENDANCE AT LECTURES.

See FORGERY.

[I. L. R. 15 All. 210

CERTIFICATE OF ENTRANCE TO UNCOVENANTED SERVICE FAMILY PENSION FUND.

See STAMP ACT, 1879, s. 3, CL. 15.

[I. L. R. 19 Calc. 499

CERTIFICATE OF GUARDIANSHIP.

See EVIDENCE ACT, s. 35.

[I. L. R. 17 Calc. 849

See GUARDIAN—APPOINTMENT.

[I. L. R. 13 All. 78

See MINOR—CUSTODY OF MINORS.

[I. L. R. 12 All. 213

———, Order for—

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 17 Calc. 347

CERTIFICATE OF POLITICAL AGENT.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[I. L. R. 13 Mad. 423

CERTIFICATE OF SALE.

See HINDU LAW—JOINT-FAMILY—SALE OF JOINT-FAMILY PROPERTY IN EXECUTION, &c.

[I. L. R. 13 Mad. 47

See PUBLIC DEMANDS RECOVERY ACT, s. 2.

[I. L. R. 21 Calc. 350

See SALE IN EXECUTION OF DECREE—PURCHASERS TITLE OF—CERTIFICATES OF SALE.

[I. L. R. 16 Mad. 208

[I. L. R. 17 Bom. 375

See STAMP ACT, 1879, SCH. I, ART. 16.

[I. L. R. 15 All. 107

——, Irregular description in.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 20 Calc. 11

CERTIFICATE OF TITLE.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R. 18 Calc. 125

CERTIFICATE REQUIRED BY RULES UNDER STAMP ACT.

See STAMP ACT, 1879, s. 3.

[I. L. R. 18 Calc. 39

See STAMP ACT, 1879, s. 24.

[I. L. R. 15 om. 532

See STAMP ACT, 1879, s. 61.

[I. L. R. 18 Calc. 39

CERTIFICATE UNDER BENGAL ACT VII OF 1880.

See LIMITATION ACT, 1877, s. 14.

[I. L R. 20 Calc. 264

See PUBLIC DEMANDS RECOVERY ACT, s. 8

[I. L. R. 20 Calc. 264

See PUBLIC DEMANDS RECOVERY ACT, ss. 21, 22.

[I. L. R. 17 Calc. 414

[I. L R. 20 Calc. 826

CESS.

See APPEAL—ACTS—BENGAL TENANCY ACT.

[I. L. R. 20 Calc. 254

[I. L. R. 21 Calc. 132

See BOMBAY ACT III OF 1869, s. 8.

[I. L. R. 17 Bom. 54, 422

CESS—*continued.*

1.—*Cess Act (Bengal Act IX of* 1880)—*Public Demands Recovery Act (Bengal Act VII of* 1880) *s.* 10—*Personal debt—Recovery of cesses—Property belonging to a person not recorded as proprietor.*] An amount due on account of cesses under the Bengal Cess Act, 1880, is only a personal debt, and cannot properly be recovered under the Public Demands Recovery Act, 1880, from the property on which it is assessed, when such property belongs to a third person who may not have been recorded as proprietor under Bengal Act VII of 1876. SHEKAAT HOSAIN *v.* SASI KAR.

[I. L. R. 19 Calc. 783

2.—*Construction of Act XIX of* 1844, *abolishing cesses on trades—Bombay town duties.*] On a question whether a cess of two annas per candy on all cotton bought in, and exported from, Broach, paid by the buyer, according to usage from time immemorial, to a temple in that town, was abolished by Act XIX of 1844:—*Held*, that it was a cess of a mixed kind, local and indirect, upon the trade of a cotton buyer carried on in Broach, attaching when he bought cotton in that town for exportation, and that it fell within the meaning of that Act, so that the right to claim it had been thereby abolished. KALYANRAIJI *v.* MOFUSSIL COMPANY.

[I. L. R. 14 Bom. 526

[L. R. 17 I. A. 103

3.—*Abwabs, meaning of—Long period of payment of abwabs—Effect of ss.* 54, 55 *and* 61 *of Regulation VIII of* 1793.] Payments over and above rent, and described as *abwabs* in the zemindari accounts, for which, as *abwabs*, the tenant was sued, were held to be rightly treated as *abwabs* and not as forming part of the rent fixed. They were held not to be recoverable from the tenant, although they had been paid for a period of unknown length, and according to a long standing practice, not having been, if payable at the time of the permanent settlement, consolidated with the rent, as they should have been if then payable, under s. 54 of Regulation VIII of 1793. Not having been so consolidated, they could not be recovered under s. 61. If not payable at the time of the permanent settlement, they came under the term of new *abwabs*, and in that case were illegal under s. 55. TILUKHDARI SINGH *v.* CHULHAN MAHTON.

[I. L. R. 17 Calc. 131

[L. R. 16 I. A. 152

Affirming CHULHAN MAHTON *v.* TILUKDARI SINGH.

[I. L. R. 11 Calc. 175

4.—*Illegal cess—Asul and abwab—Rent—Bengal Tenancy Act (VIII of* 1885), *ss.* 3 (5), 74—*Bengal Reg. VIII of* 1793, *ss.* 54, 55, 57, 58, 61—*Bengal Reg. V of* 1812, *ss.* 2, 3.] In a suit for rent at the rate of Rs. 22-2 per annum the defence was that the yearly rent was not Rs. 22-2, but Rs 18-10-6, and that the difference was made up of certain illegal cesses such as *sarak*, *neg* and *khuruch*, which had been paid for a long time with the rent and without specification in

CESS—*concluded.*

the rent receipts. Both the lower Courts found that Rs. 18-10-6 was the defendant's *asul jama*:—*Held*, by the Full Bench, upon a review of the history of *abwabs*:—That the amounts sued for under the head of *sarak*, *neg* and *khuruch* were *abwabs*, and were therefore not recoverable, and that all additions to the actual rent under the denomination of *abwabs* are illegal, and any agreement to pay them is void. *Pudma Nund Singh* v. *Baij Nath Singh*, I. L. R. 15 Calc. 828, dissented from. *Per* PETHERAM, C.J.—The law, whether under the Regulations, or the Bengal Tenancy Act, or as laid down by the Privy Council in *Tilukdhari Singh* v. *Chulhan Mahton*, I. L. R. 17 Calc. 131; L. R. 16 I. A. 152, is the same, namely, that no imposition under any name whatever shall be recovered from the tenant for or on account of the occupation or tenure of the land beyond the sum which has been fixed for rent, whether that sum has been paid by agreement or by judicial determination between the landlord and the tenant. Any contract, whether express or implied, to pay anything beyond that sum, under any name whatever, for or in respect of the occupation of the land cannot be enforced. The case of *Pudma Nund Singh* v. *Baij Nath Singh* has been overruled by the Privy Council in *Tilukdhari Singh* v. *Chultan Mahton*. *Per* GHOSE, J.—If in any given case the Court finds that any particular sum specified in the lease, or agreed to be paid, is a lawful consideration for the use and occupation of any land, that is to say, if it is really part of the rent although not described as such, the Court would be justified in holding that it is not an *abwab* and is recoverable by the landlord. *Pudma Nund Singh* v. *Baij Nath Singh*, I. L. R. 15 Calc. 828, explained. RADHA PROSAD SINGH *v.* BAL KOWAR KOERI.

[I. L. R. 17 Calc. 726

CESS ACT.

See BENGAL CESS ACT (BENGAL ACT IX OF 1880).

CHAIRMAN.

See COMPANY—MEETINGS AND VOTING.

[I. L. R. 15 Bom. 164

——, of Calcutta Municipality, discretion of.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[I. L. R. 19 Calc. 192, 195 note, 198

See SPECIFIC RELIEF ACT, S. 45.

[I. L. R. 19 Calc. 192, 195 note, 198

——, of Municipality as Magistrate.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R. 15 Mad. 83

——, of Municipality, delegation of powers of.

See BENGAL MUNICIPAL ACT, 1884, S. 45.

[I. L. R. 20 Calc. 448

CHAMPERTY.

1.—*Mortgage—Equity of redemption, assignment of—Suit on such assignment—Public policy, assignment not opposed to.*] The plaintiff sued, as the assignee of the equity of redemption, for account and redemption, alleging that the lands in dispute had been mortgaged to the defendant in 1844 by the ancestor of his (the plaintiff's) assignor. The defendant admitted the mortgage, but set up an unregistered *bedavapatra* (release) of the equity of redemption, dated 1865, alleged to have been passed to him by the father of the plaintiff's assignor for a consideration of Rs. 800. He also contended that the plaintiff's assignment was champertous, and made with the view of depriving him of the property. The Court of First Instance held that the assignment was "a gambling transaction and entered into with the object of gaining the spoils of an unrighteous litigation, and null and void as opposed to public policy," and that the release set up by the defendant could not be given in proof for want of registration, and, therefore, rejected the plaintiff's claim. On appeal to the High Court:—*Held*, reversing the decree of the lower Court, that although the transaction might not be a praiseworthy one *in foro conscientiæ*, it could not be regarded by a Civil Court as one entered into "with the object of gaining the spoils of an unrighteous litigation." The equity of redemption was an interest in the land which it was open to any one to purchase, however speculative the transaction might be under the special circumstances of the case GOPAL RAMCHANDRA *v.* GANGARAM ANANDISHET.

[I. L. R. 14 Bom. 72

2.—*Agreement to supply money for another person's suit—Excess of the reward rendering such agreement inequitable.*] A fair agreement to supply money to a suitor to carry on a suit, in consideration of the lender's having share of the property sued for, if recovered, is not to be regarded as necessarily opposed to public policy, or, merely on this ground, void. But in agreements of this kind the questions are, (*a*) whether the agreement is extortionate and unconscionable, so as to be inequitable against the borrower; or (*b*) whether the agreement has been made not with the *bonâ fide* object of assisting a claim believed to be just and of obtaining reasonable compensation therefor, but for improper objects, as for the purpose of gambling in litigation, or of injuring others, so as to be, for these reasons, contrary to public policy. In either of these cases, effect is not to be given to the agreement. Here, upon the facts, the above case (*b*) did not arise, and this agreement was not contrary to public policy. But this agreement fell within case (*a*), and the judgment of the High Court was affirmed, that the agreement was so extortionate and unconscionable, in regard to the excess of the reward, that it was inequitable, and, therefore, not enforceable against the defendant. *Ramcoomar Coondoo* v. *Chunder Canto Mookerjee*, I. L. R. 2 Calc., 233: L. R. 4 I. A. 23, referred to and followed. MOHKAM SINGH *v.* RUP SINGH.

[I. L. R. 15 All. 352

[L. R. 20 I. A. 127

CHAMPERTY—*concluded.*

3.—*Agreement to share property the subject of suit—Claim for payment for work done and expenses properly incurred—Agreements not opposed to public policy.*] The English law of champerty is not in force in India. Agreements made by claimants of property in litigation to share it with others on their obtaining decrees in consideration of funds being supplied by the latter for carrying on their suits, are not in themselves opposed to public policy, nor are they necessarily void. But such agreements, when extortionate, are inequitable; and in that case should not receive effect. Although the present suit failed for this last reason, still reasonable compensation, under the claim for general relief for work done and expense properly incurred, could be awarded, as it had been by the Appellate Court below. RAGHUNATH *v.* NIL KANTH.

[I. L. R. 20 Calc. 843

S. C. KUNWAR RAMLAL *v.* NIL KANTH.

[L. R. 20 I. A. 112

CHARGE.

Col.
1. Form of Charge 137
2. Alteration or Amendment of Charge 137

——, Form of.

See PENAL CODE, s. 152.

[I. L. R. 19 Calc. 105

See PENAL CODE, s. 475.

[I. L. R. 15 Bom. 189

——, Framing new or additional charge.

See APPEAL IN CRIMINAL CASES—ACQUITTALS, APPEALS FROM.

[I. L. R. 16 Bom. 414

(1) FORM OF CHARGE.

1.—*Criminal Procedure Code*, 1882, *ss.* 222, 223—*Particulars to be inserted in charge.*] A committing Magistrate is bound under ss. 222 and 223 of the Code of Criminal Procedure (Act X of 1882), to insert in the heads of charge sufficient particulars of time, place, person, and circumstance, as will give each of the prisoners notice of the matter with which he is charged. QUEEN-EMPRESS *v.* FAKIRAPA.

[I. L. R. 15 Bom. 491

(2) ALTERATION OR AMENDMENT OF CHARGE.

2.—*Criminal Procedure Code, ss.* 226, 227—*Power of Sessions Judge to withdraw a charge framed by him.*] The word "alter" in s. 227 of the Criminal Procedure Code includes withdrawal by a Sessions Judge of a charge added by him to the charge on which the commitment had been made. DWARKA LAL *v.* MAHADEO RAI.

[I. L. R. 12 All. 551

CHARGE—*concluded.*

(2) ALTERATION OR AMENDMENT OF CHARGE—*concluded.*

3.—*Conviction for an offence different from that with which accused is charged—Extradition—Lex fori—Criminal Procedure Code*, 1882, *ss.* 227, 238—*Penal Code, ss.* 395, 398, 379—*Dacoity—Theft.*] The accused were subjects of His Highness the Gaekwar of Baroda. They were extradited for committing dacoity in British India. The Magistrate, who held a preliminary inquiry into the matter, committed the accused to the Sessions Court on a charge under s. 398 of the Penal Code (XLV of 1860). The Sessions Judge amended the charge to one under s. 395, on the ground that, as the accused had been extradited on a charge under s. 395, they could be tried and convicted only under that section, and no other. At the end of the trial, the Sessions Judge finding that the accused were guilty of theft, but not of dacoity, acquitted them:—*Held*, reversing the order of acquittal, that it was competent to the Sessions Judge to alter the charge under s. 227 of the Code of Criminal Procedure (Act X of 1882) and under s. 238 to convict the accused of the minor offence, which the evidence established. *Held*, also, that the Code of Criminal Procedure was applicable as *lex fori*. QUEEN-EMPRESS *v.* KHODA UMA.

[I. L. R. 17 Bom. 369

CHARGE TO JURY.

Col.
1. Misdirection 138

See PENAL CODE, s. 475.

[I. L. R. 15 Bom. 189

(1) MISDIRECTION.

1.—*Corroboration — Improper reception of evidence—Accomplice—Evidence Act (I of* 1872), *ss.* 114, *ill.* (*b*), 133—*Criminal Procedure Code (X of* 1882), *ss.* 337, 364—*Letters Patent of* 1865, *s.* 26—*Review.*] Case in which, upon review, a certificate having been granted by the Advocate-General under s. 26 of the Letters Patent, a conviction was quashed on the ground of improper reception of evidence and misdirection. The accused being upon his trial at the Sessions for murder, the two principal witnesses for the prosecution were *G* and *M*, to whom pardons were tendered by the committing Magistrate under s. 337 of the Criminal Procedure Code, and who had accepted the pardons. The Judge read to the jury statements (which had not been admitted in evidence) by *G* and *M* purporting to have been taken under s. 364:—*Held*, that the improper reception of such evidence constituted a decision erroneous in point of law calculated to prejudice the prisoner. The Judge further charged the jury that they were not to convict upon the evidence of *G* if satisfied that he was an accomplice and uncorroborated; but coupled the direction with a strong expression of opinion that *G* was not an accomplice. *Held*, that this constituted a misdirection in fact, though not in form, calculated seriously to prejudice the prisoner's case. QUEEN-EMPRESS *v.* O'HARA.

[I. L. R. 17 Calc. 642

CHARGE TO JURY—*continued.*

(1) MISDIRECTION—*continued.*

2.—*Penal Code, s.* 411—*Retaining stolen property.*] The accused were charged with retaining stolen property under s. 411 of the Penal Code (Act XLV of 1860). The Sessions Judge in his charge to the jury merely directed them to find whether the property was stolen, and whether it was retained by the accused:—*Held*, that the charge was defective and amounted to a misdirection. The Sessions Judge should have directed the jury to find (1) whether the property was stolen; (2) whether it was dishonestly retained; and (3) whether the accused knew or had reason to believe the same to be stolen property. Unless these questions were found by the jury in the affirmative the accused could not legally be convicted of an offence under s. 411 of the Penal Code. QUEEN-EMPRESS *v.* BALYA SOMYA.

[I. L. R. 15 Bom. 369

3.—*Penal Code, ss.* 474, 475 — *Possession of forged documents bearing counterfeit marks—Ingredients of the offence.*] To support a charge under s. 474 of the Penal Code, it is necessary for the prosecution to prove (1) that the documents in respect of which the charge is brought are forged; (2) that the accused knew them to be forged; (3) that he was in possession of them; (4) that he intended that they should be fraudulently or dishonestly used as genuine; and (5) that each of the documents is of the description mentioned in s. 466 or s. 467 of the Penal Code. To support a charge under the latter part of s. 475 of the Penal Code, it is necessary for the prosecution to prove (1) that the accused was in possession of the papers referred to in the charge; (2) that the devices or marks were counterfeited on them; (3) that the marks were such as are used for the purpose of authenticating any document described in s. 467; and (4) that the accused intended that the marks should be used for the purpose of giving the appearance of authenticity to documents either then forged or thereafter to be forged. The accused was charged with being in possession of forged documents, an offence punishable under ss. 474 and 475 of the Penal Code. In his summing up, the Sessions Judge, after stating that the documents were admitted by the defence to be forgeries, told the jury that the only issue they had to decide was whether the forged documents were in the possession of the accused, and whether the nature of one, at all events, of the documents was such as to connect them with the accused, being the kind of document he would be likely to have in his house and he alone; and that if they found this issue in the affirmative, they must return a verdict of guilty:—*Held*, that the charge to the jury was defective and misleading and insufficiently complied with the requirements of s. 297 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* ABAJI RAMCHANDRA.

[I. L. R. 16 Bom. 165

4.—*What amounts to misdirection—Penal Code, s.* 366 — *Question of intention — Kidnapping.*] In a trial with a jury under s. 366 of the Penal Code, the Judge on the question of intent charged the jury in the following words:—"It remains only to consider the question of intent. The charge was that the girl was kidnapped in order that she might be forced or seduced to illicit intercourse. As to this, it is sufficient to say that no other inference is possible under the circumstances. When a man carries off a young girl at night from her father's house the presumption is that he did so with the intent indicated above. It would be open to him, if he had admitted the kidnapping, to prove that he had some other object, but no other object is apparent on the face of the facts":—*Held*, that this amounted to a misdirection of the jury. The question of intent was a pure question of fact, but the way in which it had been put to the jury left them no option but to adopt the view taken by the Judge. QUEEN-EMPRESS *v.* HUGHES.

[I. L. R. 14 All. 25

CHARITABLE BEQUEST.

See HINDU LAW—WILL—CONSTRUCTION—CHARITABLE BEQUEST.

[I. L. R. 14 Bom. 1, 482

[I. L. R. 17 Bom. 351

"CHARITABLE PURPOSES."

See BOMBAY MUNICIPAL ACT III OF 1888, SS. 143, 144.

[I. L. R. 16 Bom. 217

CHARITABLE USES, BEQUEST TO.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 448

CHARITIES.

See CASES UNDER RIGHT OF SUIT—CHARITIES.

CHARTER ACT (24 and 25 Vict., c. 104), s. 15.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[I. L. R. 19 Calc. 127

CHARTER-PARTY.

1.—*Misdescription of tonnage of ship—Misrepresentation in contract—Contract Act (IX of* 1872), *ss.* 10, 13, 14, 18, 19—*Condition precedent.*] The defendants in Bombay chartered a ship from the plaintiffs which was described in the charter-party as of the measurement of about 2,700—2,800 tons nett register. The ship had never been in Bombay, and was wholly unknown to the defendants. Evidence was given that in the negotiations for the charter-party the plaintiffs stated to the defendants that the ship was certainly not more than 2,800 tonnage register. She, however, turned out to be of the registered tonnage of 3,045 tons, and the defendants refused to accept her in

CHARTER-PARTY—*continued.*

fulfilment of the charter-party:—*Held*, by PARSONS, J., that the defendants were entitled to treat the contract as void by reason of the erroneous statement of the plaintiffs with regard to the size of the ship. (Contract Act IX of 1872, ss. 10, 13, 14, 18, 19.) *Held*, on appeal, by SARGENT, C. J., and FARRAN, J. (1) that the representation in the charter-party as to the tonnage of the vessel was intended to be a substantive part of the contract between the parties; (2) that the statement in the contract was a condition precedent of which the defendants were entitled to avail themselves whether or no they would have suffered loss had they accepted the ship; (3) that the facts justified the defendants in repudiating the contract. OCEANIC STEAM NAVIGATION COMPANY *v.* SOONDERDAS DHURUMSEY.

[I. L. R. 15 Bom. 389

Affirming the decision in S. C.

[I. L. R. 14 Bom. 241

2.—*Optional clause—Choice of ports to load cargo—Election of port.*] The plaintiff chartered the defendants' ship to proceed from Bombay to Jedda and thence carry a cargo of pilgrims to Calcutta. The charter-party contained the following clause:—"Owners to have the option of requiring the charterer to ship salt at Ras Rawaya or at Aden to fill up the lower holds of the steamer, at a lump sum of Rs. 12,000 payable before delivery at the port of discharge. Rs. 2,000 to be deposited by the charterer on account of the above freight, out of which Rs. 1,500 to be paid here (Bombay) 48 hours before sailing, and Rs. 500 before departure of the steamer from Jedda." Before the ship left Bombay the plaintiff was called upon to pay and paid the Rs. 1,500 advance freight. On the ship's arrival at Jedda the plaintiff was required by the defendants' agent to name the port where he intended to load the salt, and pay the Rs. 500 named in the charter-party. The plaintiff, in reply, named Aden, and paid the Rs. 500, which the defendants' agent acknowledged as received "for filling up salt to go to Aden." This was on the 22nd July. The captain, however, believing that the plaintiff would not find salt at Aden for Calcutta, refused to sail to Aden to load the salt, unless the expense of going there and returning to Jedda for the pilgrims was guaranteed by the plaintiff, which the plaintiff refused to do. Subsequently, on the 30th July, the captain on the instructions of the defendants, informed the plaintiff that the choice of the port to load salt was with the defendants, and that they named Ras Rawaya as the port where the plaintiff was required to load his salt, and refused to go to Aden. The plaintiff refused to go to Ras Rawaya. There was, to the defendants' knowledge, no salt at Ras Rawaya. There was plenty of salt at Aden, though none offering for Calcutta, owing to the prices ruling at the latter port. The captain refusing to load the pilgrims unless the balance of the Rs. 12,000 salt freight was paid in advance, the plaintiff paid it, and brought this suit to recover the whole of the said sum:—*Held*, that the plaintiff was entitled to succeed (i) because by the true construction of the contract

CHARTER-PARTY—*concluded.*

the choice of the port must be taken to be with the plaintiff, who had to do all that was necessary to provide the salt; the option given by the contract to the owners being as to whether they should require salt to be loaded or not; and (ii) because, if the election of the port was with the defendants they, through their agent at Jedda, conclusively determined their election in favour of Aden at latest on the 22nd July when they accepted the Rs. 500 "for filling up salt to go to Aden." ABDUL RAHMAN ALLARAKHIA *v.* HASANBHOY VISRAM.

[I. L. R. 16 Bom. 501

3.—*Mistake in date—Mistake mutual or unilateral—Rectification or rescission of contract.*] The plaintiffs required a steamer to sail from Jedda "fifteen days after the *Haj*," in order to convey pilgrims returning to Bombay. They chartered a steamer from the defendants in June 1891 for that purpose. The defendants chartered their steamers by English dates. The date inserted in the charter-party was "the 10th August 1892 (fifteen days after the *Haj*"). "The 10th August 1892" was given or accepted by the plaintiffs in the belief that it corresponded with the fifteenth day after the *Haj*. The defendants had no belief on the subject, and contracted only with respect to the English date. The 19th July 1892, and not the 10th August 1892, in fact corresponded with the fifteenth day after the *Haj*. On finding out the mistake in March 1892, the plaintiff brought this suit for rectification of the charter-party by the insertion of the correct date, the 19th July 1892, instead of the erroneous date, the 10th August 1892. Meanwhile the defendants had let all their steamers, and could not give the plaintiff one for the 19th July 1892:—*Held*, that the agreement was one for the 10th August 1892, and that, as that date was a matter materially inducing the agreement, there could be no rectification, but only cancellation, even if both parties were under a mistake. *Held*, further, that the mistake was not mutual, but on the plaintiffs' part only; and, therefore, there could be no rectification. A plaintiff seeking rectification must show that there was an actual concluded contract antecedent to the instrument sought to be rectified, and that such contract is inaccurately represented in the instrument. ABDUL RAHMAN ALLARAKHIA *v.* BOMBAY AND PERSIA STEAM NAVIGATION COMPANY.

[I. L. R. 16 Bom. 561

CHEATING.

See FORGERY.

[I. L. R. 19 Calc. 380
[I. L. R. 13 Mad. 27
[I. L. R. 15 All. 210

—*Cheating by personation—Penal Code (Act XLV of* 1860), *ss.* 415, 419—*Registration of false divorce—Bengal Act I of* 1876.] To constitute the offence of cheating under s. 415 of the Penal Code, the damage or harm caused, or likely to be caused, to the person deceived in mind, body,

CHEATING—*concluded.*

reputation, or property must be the necessary consequence of the act done by reason of the deceit practised, or must be necessarily likely to follow therefrom. Where, therefore, certain persons were charged under s. 419 of the Penal Code, one with personating another person before a Registrar, and the others with abetting such personation and causing the Registrar to register a divorce under the provisions of Bengal Act I of 1876 with the wife of the personated person, and where the lower Courts convicted the accused under that section, holding that as such registrations were voluntary and a source of gain to the Registrar, harm was caused to the Registrar in mind and reputation by registering false divorces as well as by losing his fees in the future through persons being less likely to avail themselves of his services, and that therefore an offence under the section had been committed, *held*, that the possibilities contemplated by the lower Courts were too remote; that the facts did not constitute an offence under the section; and that the conviction must therefore be set aside. MOJEY *v.* QUEEN-EMPRESS; SABYA NASHYO *v.* QUEEN-EMPRESS.

[I. L. R. 17 Calc. 606

CHEQUE, PAYMENT OF.

See BANKER AND CUSTOMER.

[L. R. 18 I. A. 111

CHILD.

See CUSTODY OF CHILD.

———, Evidence of.

See OATHS ACT, S. 13.

[I. L. R. 16 Bom. 359

CHILD-WIFE.

See HURT—GRIEVOUS HURT.

[I. L. R. 18 Calc. 49

CHOTA NAGPORE ENCUMBERED ESTATES ACTS (VI OF 1876, AND V OF 1884).

See SPECIFIC PERFORMANCE—SPECIFIC PERFORMANCE ALLOWED.

[I. L. R. 17 Calc. 223

See STATUTES, CONSTRUCTION OF.

[I. L. R. 20 Calc. 609

———, ss. 3, 7, and Act V of 1884.—*Deo Estate Act (IX of* 1886) *s.* 1, *cl.* 4—"*Debts and liabilities*," *meaning of—Process including summons.*] The Chota Nagpore Encumbered Estates Act (VI of 1876), as amended by Act V of 1884 (which by Act IX of 1886 is applied to the Deo estate in the district of Gaya subject to certain modifications), is intended to afford relief to holders of land in Chota Nagpore (and in the Deo estate) in respect of all debts and liabilities to which they were (immediately before the publication of the vesting order) subject, or with which their property was

CHOTA NAGPORE ENCUMBERED ESTATES ACTS (VI OF 1876, AND V OF 1884), ss. 3, 7—*concluded.*

(at the time of the publication of the vesting order) charged, other than debts due or liabilities incurred to Government. The effect of the second portion of s. 3 is to bar all suits instituted after the vesting order is made and whilst it is in force. S. 7 of the Act applies *mutatis mutandis* to create a bar in respect of the debts dealt with in s. 1, cl. 4 of the Deo Estate Act, 1886. The result of ss. 3 and 7 of Act VI of 1876, when read with regard to the whole scope of the Act, is that suits or proceedings to enforce such debts or liabilities as are comtemplated by the Act, that is, other than debts due or liabilities incurred to Government, are, if pending at the time of the vesting order, barred; if instituted after it, in respect of such debts and liabilities, null and void in their inception. KAMESHAR PRASAD *v.* BHIKHAN NARAIN SINGH; BHIKHAN NARAIN SINGH *v.* KAMESHAR PRASAD.

[I. L. R. 20 Calc. 609

CHOTA NAGPORE TENURES ACT (BENGAL ACT II OF 1869).

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.

[I. L. R. 19 Calc. 91

CIVIL PROCEDURE CODE (ACT XIV OF 1882).

———, s. 2.

See APPEAL—ACTS—BENGAL TENANCY ACT.

[I. L. R. 19 Calc. 485

See CASES UNDER APPEAL—DECREES.

See APPEAL—DEFAULT IN APPEARANCE.

[I. L. R. 16 Bom. 23

[I. L. R. 15 All. 359

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[I. L. R. 15 All. 359

———, s. 11.

See BENGAL TENANCY ACT, S. 174.

[I. L. R. 18 Calc. 481

See COMPROMISE — COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[I. L. R. 15 Bom. 594

See CASES UNDER JURISDICTION OF CIVIL COURT.

See RIGHT OF SUIT—OFFICE OR EMOLUMENT.

[I. L. R. 17 Calc. 906

———, s. 13.

See ENDOWMENT.

[I. L. R. 14 Mad. 1

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 13—*continued.*

See ESTOPPEL—ESTOPPEL BY JUDGMENTS.
[I. L. R. 14 All. 64

See MALABAR LAW—JOINT-FAMILY.
[I. L. R. 15 Mad. 6

See CASES UNDER RES JUDICATA.

———, s. 14.

See FOREIGN COURT, JUDGMENT OF.
[I. L. R. 15 Mad. 82

———, s. 15.

See DISTRICT JUDGE, JURISDICTION OF.
[I. L. R. 15 Mad. 241

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.
[I. L. R. 13 Mad. 145

See SUBORDINATE JUDGE, JURISDICTION OF.
[I. L. R. 17 Calc. 155

———, s. 16.

See JURISDICTION—SUITS FOR LAND.
[I. L. R. 17 Bom. 570

See MUNSIF, JURISDICTION OF.
[I. L. R. 19 Calc. 8

See RECORDER OF RANGOON, JURISDICTION OF.
[I. L. R. 20 Calc. 689

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.
[I. L. R. 17 Calc. 699

———, s. 17.

See DISTRICT JUDGE, JURISDICTION OF.
[I. L. R. 12 All. 213

See MINOR—CUSTODY OF MINORS.
[I. L. R. 12 All. 213

———, s. 25.

See JURISDICTION—QUESTION OF JURISDICTION — CONSENT OF PARTIES AND WAIVER OF JURISDICTION.
[I. L. R. 13 Mad. 211

See TRANSFER OF CIVIL CASE.
[I. L. R. 13 All. 324

———, s. 26.

See MISJOINDER.
[I. L. R. 16 Bom. 119

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

———, s. 27.

See LIMITATION ACT, 1877, s. 22.
[I. L. R. 17 Bom. 413

See PARTIES — ADDING PARTIES TO SUITS—PLAINTIFFS.
[I. L. R. 17 Bom. 413

———, s. 30.

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
[I. L. R. 14 Mad. 57
[I. L. R. 20 Calc. 397

———, s. 30.

See PLAINT—VERIFICATION AND SIGNATURE.
[I. L. R. 17 Calc. 580

———, s. 31.

See MISJOINDER.
[I. L. R. 16 Bom. 119

See MULTIFARIOUSNESS.
[I. L. R. 14 Mad. 103

———, s. 34.

See MISJOINDER.
[I. L. R. 16 Bom. 119

See PLAINT—VERIFICATION AND SIGNATURE.
[I. L. R. 17 Calc. 580

———, s. 39.

See PLEADER—APPOINTMENT AND APPEARANCE.
[I. L. R. 15 Mad. 135

———, s. 42.

See RES JUDICATA—MATTERS IN ISSUE.
[I. L. R. 19 Calc. 159

———, s. 43.

See ENDOWMENT.
[I. L. R. 14 Mad. 1

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L. R. 18 Calc. 515

See CASES UNDER RELINQUISHMENT OF OR OMISSION TO SUE FOR PORTION OF CLAIM.

See RES JUDICATA—COMPETENT COURT.
[I. L. R. 16 Mad. 481

See RES JUDICATA—ESTOPPEL BY JUDGMENT.
[I. L. R. 14 Mad. 365

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 43—*continued.*

See RES JUDICATA—MATTERS IN ISSUE.
[I. L. R. 19 Calc. 159

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES.
[I. L. R. 14 Bom. 408

——, s. 44.

See JOINDER OF CAUSES OF ACTION.
[I. L. R. 14 Mad. 284

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.
[I. L. R. 19 Calc. 615

——, s. 45.

See MULTIFARIOUSNESS.
[I. L. R. 14 All. 531

——, s. 50.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R. 16 Bom. 519

See VALUATION OF SUIT—SUITS.
[I. L. R. 15 Bom. 416

——, s. 51.

See PLAINT—VERIFICATION AND SIGNATURE.
[I. L. R. 21 Calc. 60

——, s. 52.

See PLAINT—VERIFICATION AND SIGNATURE.
[I. L. R. 15 All. 59

——, s. 53.

See PLAINT—AMENDMENT OF PLAINT.
[I. L. R. 16 Mad. 319
[I. L. R. 20 Calc. 805

——, s. 54.

See COURT-FEES ACT, ss. 10, 11.
[I. L. R. 12 All. 129

See LIMITATION ACT, 1877 s. 4.
[I. L. R. 15 All. 65
[I. L. R. 20 Calc. 41

See PLAINT—AMENDMENT OF PLAINT.
[I. L. R. 16 Bom. 263

1.—s. 54.—*Plaint insufficiently stamped—Power of Court to grant time for making good the deficiency—Limitation.*] When a Court fixes a time under cl. (*a*) or cl. (*b*) of s. 54 of the Code of Civil Procedure, it must be a time within limitation. S. 54 does not give a Court any power to extend the ordinarily prescribed period of limitation for suits. *Moti Sahu* v. *Chhatri Das*, I. L. R. 19 Calc. 780, and *Yakut-un-nissa Bibi* v. *Kishoree Mohun Roy*, I. L. R. 19 Calc. 747, discussed JAINTI PRASAD *v.* BACHU SINGH.
[I. L. R. 15 All. 65

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 54—*continued.*

2.—s. 54, cls. (a) and (b)—and ss. 582 and 683 — *Original and Appellate jurisdiction of High Court.*] Cls. (*a*) and (*b*) of s. 54 of the Civil Procedure Code which are declared by s. 638 to be inapplicable to the original civil jurisdiction of the High Court, are also inapplicable to its appellate jurisdiction, notwithstanding the provisions of s. 582. BALKARAN RAI *v.* GOBIND NATH TIWARI.
[I. L. R. 12 All. 129

——, s. 56.

See COURT-FEES ACT, ss. 10, 11.
[I. L. R. 12 All. 129

——, s. 57.

See SPECIAL APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R. 14 Mad. 462

——, ss. 79, 80, 82.

See PROCESS, SERVICE OF.
[I. L. R. 16 Bom. 117

——, s. 80.

See SUMMONS, SERVICE OF.
[I. L. R. 19 Calc. 201

——, ss. 96 to 109, Ch. VII.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[I. L. R. 15 All. 84

——, s. 99A.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY.
[I. L. R. 14 Bom. 267

——, s. 108.

See BENGAL TENANCY ACT, SCH. III, ART. 6.
[I. L. R. 21 Calc. 387

See LIMITATION ACT, 1877, ART. 164.
[I. L. R. 17 Bom. 507

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—NEW TRIALS.
[I. L. R. 17 Bom. 507

——, s. 108 and s. 157.—*Ex parte decree—Presidency Small Cause Court Act (XV of 1882), s. 37 — New trial—Parties, non-appearance of.*] There is a distinction made by the Code of Civil Procedure between cases decided *ex parte* in the absence of one of the parties after first hearing, and cases decided in the absence of one of the

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s 108—*continued.*

parties at an adjourned hearing. Chapter VII of the Code relates to the appearance of parties and the consequence of their non-appearance at first hearings, whereas Chapter XIII, of which s. 157 forms a part, contains the procedure for the trial of a suit on an adjournment after the first hearing. Where, therefore, a defendant put in an appearance in the Small Cause Court at the first hearing, and the case was adjourned to a later date for hearing, on which date the case was heard in his absence and a decree given against him, *held*, that such a decree was not one made *ex parte* so as to enable the defendant to obtain the benefit of s. 108 of the Code, but that his only remedy was under s. 37 of Act XV of 1882. SITAL HARI BANERJEE *v.* HEERA LAL CHATTERJEE.

[I. L. R. 21 Calc. 269

——, s. 111.

See MORTGAGE—ACCOUNTS.

[I. L. R. 15 Mad. 290

See CASES UNDER SET-OFF.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—SET-OFF.

[I. L. R. 21 Calc. 419

——, ss. 121—127.

See INTERROGATORIES.

[I. L. R. 17 Calc. 840

[I. L. R. 18 Calc. 420

——, ss. 129, 131.

See INSPECTION OF DOCUMENTS.

[I. L. R. 17 Bom. 384

——, s. 136.

See INTERROGATORIES.

[I. L. R. 18 Calc. 420

——, s. 142A.

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

[I. L. R. 14 All. 356

——, s. 154.—*Disposal of suit at first hearing.*] A Judge cannot dispose of a suit at the first hearing if a party appears and objects to the adoption of that procedure. KRISNABHUPATI *v.* RAMAMURTI.

[I. L. R. 16 Mad. 198

——, s. 156.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 15 All. 84

See LETTERS PATENT, HIGH COURT, CL. 15.

[I. L. R. 14 Mad. 88

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 156—*continued.*

See WITNESS — CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES.

[I. L. R. 20 Calc. 740

——, s. 157.

See s. 108.

[I. L. R. 21 Calc. 269

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 15 All. 84

——, s. 158.

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 15 All. 84

See RES JUDICATA — JUDGMENTS ON PRELIMINARY POINTS.

[I. L. R. 13 Mad. 510

[I. L. R. 15 All. 49

——, s. 159.

See WITNESS — CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES.

[I. L. R. 15 Bom. 86

——, s. 203.

See JUDGMENT—CIVIL CASES.

[I. L. R. 13 All. 533

——, s. 206.

See CASES UNDER DECREE—ALTERATION OR AMENDMENT OF DECREE.

See LETTERS PATENT, HIGH COURT N.-W.P., CL. 10.

[I. L. R. 14 All. 226

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[I. L. R. 21 Calc. 259

See LIMITATION ACT, 1877, ART. 179—STEP IN AID OF EXECUTION.

[I. L. R. 13 All. 124

See SALE IN EXECUTION OF DECREE—INVALID SALES—DECREE AMENDED AFTER EXECUTION.

[I. L. R. 14 Mad. 150

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 16 Mad. 424

——, ss. 207, 208.

See DECREE — ALTERATION OR AMENDMENT OF DECREE.

[I. L. R. 17 Bom. 657

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 209.

See DECREE — ALTERATION OR AMENDMENT OF DECREE.

[I. L. R. 15 All. 121

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS.

[I. L. R. 20 Calc. 360

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—DECREES.

[I. L. R. 18 Calc. 164

——, s. 210.

See s. 257A.

[I. L. R. 12 All. 571

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT.

[I. L. R. 12 All. 571

——, s. 211.

See EXECUTION OF DECREE — ORDERS AND DECREES OF PRIVY COUNCIL.

[I. L. R. 15 Mad. 203

See LIMITATION ACT, 1877, ART. 178.

[I. L. R. 19 Calc. 132

See RES JUDICATA—RELIEF NOT GRANTED.

[I. L. R. 17 Calc. 968

[I. L. R. 14 Mad. 328

See VALUATION OF SUIT—SUITS.

[I. L. R. 15 Bom. 416

——, s. 212.

See DECREE — FORM OF DECREE — POSSESSION.

[I. L. R. 14 All. 531

See LIMITATION ACT, 1877, ART. 178.

[I. L. R. 19 Calc. 132

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 19 Calc. 159

——, s. 216.

See SET-OFF—GENERAL CASES.

[I. L. R. 15 All. 9

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—SET-OFF.

[I. L. R. 20 Calc. 527

——, s. 220.

See APPEAL—COSTS.

[I. L. R. 16 Bom. 676

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 221.

See COSTS—SPECIAL CASES—MORTGAGE.

[I. L. R. 17 Bom. 32

See SET-OFF—GENERAL CASES.

[I. L. R. 17 Bom. 32

——, s. 223.

See EXECUTION OF DECREE — ORDERS AND DECREES OF PRIVY COUNCIL.

[I. L. R. 20 Calc. 105

See CASES UNDER EXECUTION OF DECREE — TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT.

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[I. L. R. 17 Calc. 699

See SPECIAL APPEAL — SMALL CAUSE COURT SUITS—GENERAL CASES.

[I. L. R. 12 All. 579

——, ss. 223–343 (Chap. XIX).

See PRACTICE—CIVIL CASES—SALE BY RECEIVER.

[I. L. R. 21 Calc. 479

——, ss. 227, 228.

See LIMITATION ACT, 1877, ART. 179—LAW APPLICABLE TO APPLICATION FOR EXECUTION.

[I. L. R. 17 Calc. 491

——, s. 228.

See SPECIAL APPEAL — SMALL CAUSE COURT SUITS—GENERAL CASES.

[I. L. R. 12 All. 579

——, ss. 229A, 229B.

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES.

[I. L. R. 15 Bom. 216

——, s. 230.

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 17 Calc. 631

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT.

[I. L. R. 12 All. 571

See LIMITATION ACT, 1877, ART. 180.

[I. L. R. 20 Calc. 551

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 230.—*Execution of decree—"Application to execute a decree"—Limitation.*] The term "application to execute a decree" in the third paragraph of s. 230 of the Code of Civil Procedure means any application to execute a decree. It is not confined to the last application preceding the expiry of the period of twelve years from either of the points of time mentioned in cl. (*a*) or cl. (*b*) of the same paragraph of the section above mentioned. *Paraga Kuar* v. *Bhagwan Din*, I. L. R. 8 All. 301, distinguished. *Ramadhar* v. *Ram Dayal*, I. L. R. 8 All. 536, referred to. TILESHAR RAI *v.* PARBATI.

[I. L. R. 15 All. 198

——, s. 231.

See EXECUTION OF DECREE—JOINT DECREE, EXECUTION OF AND LIABILITY UNDER.

[I. L. R. 15 Mad. 343

See LIMITATION ACT, 1877, s. 8.

[I. L. R. 13 Mad. 236

See LIMITATION ACT, 1877, ART. 179—JOINT DECREE—JOINT DECREE-HOLDERS.

[I. L. R. 13 Mad. 236, 347

See LIMITATION ACT, 1887, ART. 179—NATURE OF APPLICATION—GENERALLY.

[I L. R. 20 Calc. 388

[I. L. R. 14 Mad. 252

——, s. 232.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 18 Calc. 639

See LIMITATION ACT, 1877, ART. 179—JOINT DECREE—JOINT DECREE-HOLDERS.

[I. L. R. 13 Mad. 347

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—GENERALLY.

[I. L. R. 14 Mad. 252

See LIMITATION ACT, 1877, ART. 179—STEP IN AID OF EXECUTION.

[I. L. R. 13 All. 89

See REGISTRATION ACT, s. 49.

[I. L. R. 13 All. 89

1.—s. 232.—*Assignment of decree—Transfer of portion of decree—Execution of decree by transferee of portion of decree.*] No legislative prohibition exists to the transfer of a portion of a decree; and provided that the whole decree is executed, and the rights of all parties interested are cared for, there is no objection to the transferee being allowed to carry on the execution-proceedings. *Seetaput Roy* v. *Ali Hossein*, 24 W. R. 11, dissented from. KISHORE CHAND BHAKAT *v.* GISBORNE & Co.

[I. L. R. 17 Calc. 341

2.—s. 232.—*Assignment of decree—Assignee of decree under oral assignment—Right to execute decree—Plea of fraud raised in execution-proceedings.*] An assignee of a decree under an oral assignment has no *locus standi* at all to apply for execution of a decree, but, as regards one who claims to be an assignee in writing or by operation of law, the Court has a discretion under s. 232 of the Code of Civil Procedure (Act XIV of 1882), whether to recognize such assignment or not. When an assignee of a decree applied for execution, and the judgment-debtors contended that the decree sought to be executed had been obtained by fraud, and was, therefore, a nullity and incapable of execution:—*Held*, that it was not open to the judgment-debtors to raise the defence of fraud in the course of the execution-proceedings. PARVATA *v.* DIGAMBAR.

[I. L. R. 15 Bom 307

3.—s. 232.—*Sale of decree-holder's interest under a decree—Right of vendee when execution is refused—Right of suit.*] The assignee for value of a decree obtained by two persons, of whom one was a minor, applied for execution of the decree, but his application was refused under Civil Procedure Code, s. 232. He now sued to recover from his assignor the sum paid by him for the assignment:—*Held*, that the plaintiff was entitled to recover. RAMASAMI *v.* BASAVAPPA.

[I. L. R. 16 Mad. 325

——, s. 234.

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[I. L. R. 12 All. 313

See CIVIL PROCEDURE CODE, s 244—QUESTIONS IN EXECUTION OF DECREE.

[I. L. R. 12 All. 313

See CASES UNDER EXECUTION OF DECREE — EXECUTION BY AND AGAINST REPRESENTATIVES.

See PARTIES — SUBSTITUTION OF PARTIES—DEFENDANTS.

[I. L. R. 15 Mad. 399

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[I. L. R. 12 All. 440

——, s. 235.

See EXECUTION OF DECREE — APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 17 Calc. 631

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 235—*continued.*

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—IRREGULAR OR DEFECTIVE APPLICATIONS.

[I. L. R. 16 Mad. 142

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[I. L. R. 17 Calc. 53

——, s. 237.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 17 Calc. 631

See SALE IN EXECUTION OF DECREE—PURCHASERS' RIGHT OF.

[I. L. R. 14 All. 190

——, s. 244.

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See APPEAL—COSTS.

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[I. L. R. 12 All. 61

See CASES UNDER APPEAL—EXECUTION OF DECREE.

See RES JUDICATA—RELIEF NOT GRANTED.

[I. L. R. 17 Calc. 968

[I. L. R. 14 Mad. 328

(1) QUESTIONS IN EXECUTION OF DECREE.

1.—s. 244.—*Objection raising question of title between party added as representative, and the person whom he represents—Order disallowing objection.*] *G* brought a suit against *I* for the establishment of her rights as purchaser of certain immoveable properties sold in execution of a decree obtained against *I*, and for possession of the same. After the settlement of issues, but before the suit was finally disposed of, *I* died, and his brother *J* was made defendant as his legal representative. *J* consented to the suit being tried on the defence raised by *I* and upon the issues already settled. The suit was decreed, it being held that *G* was the purchaser. In execution of this decree, under which *G* sought to obtain possession, *J* objected that he was entitled to a half share of some, and to the entire sixteen annas of the other, properties, and that his brother *I* had no right whatever in the same. This objection was disallowed by the Court executing the decree on the ground that it had not been raised in the original suit, and that, as the decree has been passed in the presence of *J*, he was not entitled now to urge it. Thereupon *J* brought a suit against *G* to establish his rights:—*Held* that the order passed in the execution-proceedings disallowing *J's* objection was no bar to the suit under

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 244—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE—*continued.*

s. 244 of the Code of Civil Procedure. *Kanai Lal Khan* v. *Shashi Bhusan Biswas*, I. L. R. 6 Calc. 777; 8 C. L. R. 117, followed. GOURMONI DABEE v. JUGUT CHANDRA AUDHIKARI.

[I. L. R. 17 Calc. 57

2.—s. 244.—*Claims to attached property—Questions arising between the parties or their representatives—Code of Civil Procedure (Act XIV of 1882), ss. 278—283.*] *Held* by the Full Bench:—An objection taken by a person who has become the representative of the judgment-debtor in the course of the execution of a decree to the effect that the property attached in satisfaction thereof is his own property, and not held by him as such representative, is a matter cognizable only under s. 244 of the Code of Civil Procedure, and is not the proper subject-matter of a separate suit by a party against whom an adverse order may have been passed under ss. 280 and 281 as provided by s. 283: *Held* by the majority of the Full Bench (PRINSEP, O'KINEALY, and GHOSE, JJ.):—Sections 278 to 283 of the Civil Procedure Code do not cover the case of any contest between parties to the suit or their representatives on the record of the suit in regard to the execution, discharge, or satisfaction of a decree. The effect of the decision between such parties is that the right to enforce or oppose execution is determined under s. 244, subject to the result of such appeal as is allowed by law. *Per* PRINSEP and O'KINEALY, JJ.:—Section 244 should be liberally construed to prevent litigation. PUNCHANUN BUNDOPADHYA v. RABIA BIBI.

[I. L. R. 17 Calc. 711

3.—s. 244.—*Separate suit—Claim by legal representative to property as his own independently of deceased judgment-debtor—Jus tertii—Civil Procedure Code, ss. 234, 278, 283.*] *Held* by the Full Bench (TYRRELL, J., dissenting):—Where a judgment-debtor dies after the passing of the decree, and his legal representatives are brought on the record in execution-proceedings to represent him in respect of the decree, questions which they raise as to property which they say does not belong to his assets in their hands, and as such is not capable of being taken in execution, are questions which under s. 244 (*c*) of the Civil Procedure Code must be determined in the execution department, and not by separate suit. There is no distinction in this respect between the positions of legal representatives added to the suit before, and those added after, the decree. Under the last paragraph of s. 234, the Court executing the decree may try and determine the question whether property in the legal representative's hands formed part of the deceased judgment-debtor's estate, and finds this fact for the purpose of bringing the property to sale in execution, and giving the auction-purchaser a good title under the sale; and the Court's order is subject to appeal but not to a separate suit under

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 244—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE —*continued.*

s. 283. Where the legal representative asserts that the property is his own, and has not come to him from the deceased judgment-debtor, he cannot set up a *jus tertii*, so as to come in under s. 278 and the following sections of the Code. He can only do so where he opposes execution against any particular property on the ground that, although it is vested in him, it is vested in him not beneficially by reason of his being the representative of the judgment-debtor, but as trustee or executor of some one else. In that case either party may have the question of *jus tertii* determined in a separate suit. *Rajrup Singh* v. *Ramgolam Roy* I. L. R. 16 Calc. 1, approved; *Abdul Rahman* v. *Muhammad Yar*, I. L. R. 4 All. 190, and *Awadh Kuari* v. *Raktu Tiwari*, I. L. R. 6 All. 109, overruled; *Bahori Lal* v. *Gauri Sahai*. I. L. R. 8 All. 626, distinguished:—*Held* by TYRRELL, J., *contra*, that where the legal representative of a deceased party to the decree appears, not in his capacity of legal representative contesting a question arising between the parties and relating to the execution, discharge or satisfaction of the decree, but in his personal character independent of the suit and decree, and prefers a claim under s. 278 on the ground that the decree has no operation against certain property attached, for reasons personal to the objector and antagonistic to all the parties and their representatives as such, the objector is not debarred from bringing a separate suit by the mere accident that he is a legal representative in the execution-proceedings. SETH CHAND MAL *v.* DURGA DEI.

[I. L. R. 12 All. 313

4.—s. 244.—*Parties to suit — Alteration of decree by Court executing decree.*] The plaintiff purchased a one-gunda share in estate No. 831 and obtained a decree for possession against the defendants While the plaintiff's suit was pending, and before he took out execution under the said decree, partition-proceedings took place. By the partition-proceedings the defendants' interest in the estate No. 831 was converted into a smaller estate, No. 2218, in lieu of their share of the whole estate. The plaintiff then brought a separate suit to have it declared that the defendants' interest in estate No. 831 had passed to estate No. 2218:—*Held*, that the suit was not barred by s. 244 of the Civil Procedure Code. The required transformation of the defendants' interest could not be effected without altering the decree which was given in the former suit. The question that arose in the suit, although it was one between the same parties as those in the former suit, could not be regarded as a question relating to the execution of the decree in the former suit, and therefore the Court in execution proceedings had no authority to make the necessary alteration in the decree. KRISHNA ROY *v.* JAWAHIR SINGH.

[I. L. R. 20 Calc. 260

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE —*continued.*

5.—s. 244.—*Sale in execution of decree for arrears of rent—Fraud—Suit to set aside a sale on the ground of fraud—Decree—Questions arising between the parties or their representatives—Right of suit—Code of Civil Procedure (Act XIV of 1882), ss.* 311, 312, 314—316.] *Held* by the Full Bench, PETHERAM, C. J., PRINSEP, TOTTENHAM, and PIGOT, JJ., (GHOSE, J., dissenting), that when circumstances affecting the validity of a sale in execution have been brought about by the fraud of one of the parties to the suit, and give rise to a question between these parties such as, apart from fraud, would be within the provisions of s. 244, a suit will not lie to impeach the validity of the sale on the ground of such fraud. *Saroda Chunder Chuckerbutty* v. *Mahomed Isuf Meah*, I. L. R. 11 Calc. 376; *Viraraghava Ayyangar* v. *Venkatacharyar*, I. L. R. 5 Mad. 217; *Paranjpe* v. *Kanade*. I. L. R. 6 Bom. 148; and *Sakharam Govind Kale* v. *Damodar Akharam Gujar*, I. L. R. 9 Bom. 468, approved; *Gobind Chandra Majumdar* v. *Uma Churn Sen*, I. L. R. 14 Calc. 679, dissented from in part:—*Held* that in such a case the judgment-debtor is entitled, whether the sale has been confirmed or not, to make, as against the person guilty of the fraud or accessory thereto, such application (if any) under s. 311 as he may be entitled to make, his time for making it being computed from the time when the fraud first became known to him. *Held* further, that in cases in which the decree or the purchase is made *benami* s. 244 does not apply, and a suit may be held to lie to set aside the sale. *Per* GHOSE, J.—An objection under s. 311, or upon the ground of fraud, raised by the judgment-debtor after the sale has been confirmed under s. 312, cannot be dealt with under s. 244. In such a case the judgment-debtor is entitled upon the ground of fraud to bring a suit to set aside the sale, or at all events to have it declared that the sale passed no title to the purchaser, or that the purchaser is a trustee for him. There is no special provision in the Code for setting aside a sale on the ground of fraud when it has once been confirmed. MOHENDRO NARAIN CHATURAJ *v.* GOPAL MONDUL.

[I. L. R. 17 Calc. 769

6.—s. 244.—*Suit to set aside sale on ground of fraud—Sale in execution of mortgage-decree directing the sale of the mortgaged property under ss.* 88 *and* 89 *of Transfer of Property Act—Decree nisi not absolute—Right of suit—Civil Procedure Code, ss.* 311 *and* 312.] Where a suit to set aside a sale in execution of a decree was brought on the ground that by the fraud of the judgment-creditor the proclamation of sale had not been duly made, and the facts were that the sale was not an ordinary sale of attached property in execution of a decree, but a sale in execution of a mortgage-decree which directed the sale of the mortgaged property in accordance with the provisions of ss. 88 and 89 of the Transfer of Property Act,

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 244—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE —*continued.*

but that there was no such decree in existence, as only a decree *nisi* and not a decree absolute directing the sale had been made; and it was contended that until a decree absolute was made for the sale, the right to redeem existed, and that the suit might be regarded as a suit to redeem:—*Held* that there was nothing in these facts to distinguish the case from the Full Bench case of *Mohendro Narain Chaturaj* v. *Gopal Mondul*, I. L. R. 17 Calc. 769, and that the suit was therefore not maintainable. An order directing a sale in such a case would be sufficient authority under s. 89 of the Transfer of Property Act even if the order did not take the form of a decree such as is prescribed for a decree absolute in the case of a suit for foreclosure. SIVA PERSHAD MAITY *v.* NUNDO LALL KAR MAHAPATRA.

[I. L. R. 18 Calc. 139

7.—s. 244.—*Sale in execution of decree for arrears of rent—Fraud—Suit to set aside sale on ground of fraud—Civil Procedure Code*, 1882, *s.* 311—*Right of suit.*] *A* and *B* were two tenants whose names were registered in the landlord's *sherista*. *B* died, leaving *C D* and *E*, his sons and heirs, but no application for mutation of names in the *sherista* was made. Disputes as to rent having arisen, *A* and *C* proceeded to make deposits in Court in respect thereof, and the landlord instituted a suit against *A*, joining *C* as a party defendant, to recover the amount of rent he claimed, and obtained an *ex-parte* decree which, *inter alia*, directed that it should be satisfied out of the amount so deposited in Court. That amount, according to the landlord's case, proving insufficient to satisfy his demands, he proceeded to execute the decree and brought the holding to sale and purchased it himself. *A* and *C* then applied under s. 311 of the Code to have the sale set aside, alleging that the decree had been fraudulently executed, the sale-proclamation suppressed, and that the decree was incapable of execution in the manner adopted, and contending that it could only be executed against the amounts so deposited in Court, which were more than ample to satisfy the full amount justly due under it. That application was unsuccessful. *A*, *C*, *D* and *E* then instituted a suit to have the sale set aside on the ground of fraud:—*Held*, as regards *A* and *C*, following the decision in *Mohendro Narain Chaturaj* v. *Gopal Mondul*, I. L. R. 17 Calc. 769, that the questions as to the propriety of the execution of the rent-decree by sale, and as to the suppression of the sale-proclamation, were questions which could and ought to have been decided under s. 244, and that, so far as they were concerned, the suit would not lie. *Held*, however, as regards *D* and *E*, that as they were not parties to the rent-suit or proceedings had therein, and although as heirs of a deceased tenant who had not got their names registered in the landlord's *sherista*, they might not be able to question the decree obtained for arrears of rent, they were not thereby precluded from contesting a sale on the ground that it had been fraudulently obtained under colour of such a decree, and that it was competent to them at any rate to sue for a declaration that the sale in question did not in any way affect their rights. JAGAN NATH GORAI *v.* WATSON & Co.

[I. L. R. 19 Calc. 341

8.—s. 244.—*Suit to have an execution-sale of land set aside — Purchaser at sale sought to be set aside — Fraud, allegation of.*] Where questions are raised between the parties to a decree relating to its execution, discharge, or satisfaction, the fact that the purchaser at a judicial sale, who is no party to the decree of which the execution is in question, is interested and concerned in the result has never been held to prevent the application of s. 244 of the Civil Procedure Code, limiting the disposal of these matters to the Court executing the decree. The plaintiffs, in a suit to have the judicial sale of a zemindari set aside, alleged that the decree-holder, in part satisfaction of his decree, had received, from them and other co-sharers in the zemindari, their proportionate amounts of the debt decreed, and had agreed that their shares should be exempt from the execution-sale about to take place; that the sale took place, subject to that exemption; that the decree-holder, however, with whom some of the co-sharers and the purchasers colluded, fraudulently had the sale set aside, revived the attachment, and caused a second sale, at which all the shares in the zemindari were sold:—*Held*, that the question, besides that the charge of fraud was not sufficiently specific, was determinable, in virtue of s. 244 of the Code of Civil Procedure, only by order of the Court executing the decree. PROSUNNO KUMAR SANYAL *v.* KALI DAS SANYAL.

[I. L. R. 19 Calc. 683
[L. R. 19 I A. 166

9.—s. 244.—*Suit for money paid under decree afterwards reversed.*] In a suit of 1867 the present defendant obtained a decree for possession of a certain village and mesne profits for one year. Pending an appeal against that decree execution was stayed on the present plaintiff depositing a note for Rs. 15,000 as security. The decree was affirmed on appeal, and the present defendant had the note sold in execution and drew out of the proceeds a sum for mesne profits for subsequent years; but an appeal was preferred in the execution-proceedings to the High Court which set aside the execution so far as concerned the mesne profits for the years subsequent to that to which the original decree related. The present plaintiff thereupon attached and sold the village to recover the balance: before that amount was paid to the present plaintiff the present defendant brought a suit against him in the District Court, and there obtained a decree for mesne

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 244—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE —*continued.*

profits for the subsequent years and in execution drew the amount of the decree out of Court. In second appeal, however, the High Court on 26th September 1881 reversed the decree of the District Court, whereupon the present plaintiff applied for restitution under Civil Procedure Code, s. 583, which application was ultimately disallowed. The present suit was brought to recover the amount to which that application related:—*Held*, that the suit was not barred by the provisions of Civil Procedure Code, s. 244. NARAYANA *v.* NARAYANA.

[I. L. R. 13 Mad. 437

10.—s. 244.—*Suit for declaration of satisfaction of a decree—Satisfaction of decree out of Court—Civil Procedure Code, s.* 258.] A judgment-debtor, alleging that he had entered into an agreement with the decree-holder in satisfaction of his decree, and that the latter had, in breach of such agreement, procured the issue of a warrant of attachment, now sued for a declaration that the decree had been satisfied, and prayed also for the cancellation of the warrant of attachment:—*Held*, with regard to the provisions of s. 244 of the Civil Procedure Code, that the suit was not maintainable. BAIRAGULU *v.* BAPANNA.

[I. L. R. 15 Mad. 302

11.—s. 244.—*Order cancelling an execution-sale of land—Subsequent suit for possession brought by judgment-debtor.*] A decree-holder attached land of his judgment-debtor and brought it to sale and himself became the purchaser in execution of his decree. The purchase having been made without the permission of the Court, the sale was set aside on the application of the judgment-debtor, who now sued to recover possession of the land:—*Held*, that the suit was not maintainable under Civil Procedure Code, s. 244. VIRARAGHAVA *v.* VENKATA.

[I. L. R. 16 Mad. 287

12.—s. 244.—*Purchaser of land sold in execution—Confirmation of sale—Objection of unsaleability.*] A judgment-debtor having died before the decree was executed, his sons were brought on to the record as his representatives. Ancestral property of the judgment-debtor was then brought to sale in execution and purchased by the decree-holder, and the sale to him was confirmed. Subsequently the judgment-debtor's sons objected under Civil Procedure Code, s. 244, that the property which had been brought to sale was not liable to be sold in execution:—*Held*, that the objection was rightly made under s. 244, and a separate suit was not necessary for the purpose of an adjudication on it. KRISHNAN *v.* ARUNACHALAM.

[I. L. R. 16 Mad. 447

13.—s. 244.—*Agreement not to execute a decree—Suit to restrain execution—Agreement not to execute regarded as satisfaction of decree—Civil Procedure Code (Act XIV of* 1882), *ss. 257a*, 258.] *M* and *A* were partners, and as such were indebted to *H*. *A* died, and subsequently the debt was settled between *H* on one side and *M* and *A's* widow, as guardian of her minor sons, on the other. For a moiety of the debt a bond was passed by *M* to *H*, and for the other moiety by the widow of *A*. *H* filed a suit against *M* and got a decree, which was satisfied. *H* then sued the widow on her bond. The Court allowed her objection that she was not competent to give a bond binding her sons personally, and of its own accord made *M* a defendant, and passed a decree against *M* and *A's* estate. *H* assigned this decree to *R*, who applied for execution against *M*. *M* thereupon filed this suit against *H* and *R* praying for an injunction against the execution of the said decree and for damages against *H*. He alleged that during the pendency of the suit in which the said decree had been passed, *H* had agreed that he would not obtain a decree against him, and that, if such a decree were passed, he would not execute it. The lower Appeal Court rejected the plaint, holding that there was no cause of action against the defendant *H*. On appeal to the High Court, it having been urged that the question was one which could be decided in execution, and that under s. 244 of the Civil Procedure Code the present suit would not lie:—*Held*, that the words "relating to execution" in s. 244 must be restricted to "the contents of the order made, or to how far it has been carried out," and do not, therefore, include an agreement not to execute the decree. It being further contended that the agreement raised a question as to the "satisfaction" of the decree, and was, therefore, void without the sanction of the Court. *Held*, that the satisfaction contemplated by s. 244 must have arisen out of some transactions between the parties subsequent to the decree. MUKUND HARSHET *v.* HARIDAS KHEMJI.

[I. L. R. 17 Bom. 23

14.—s. 244, and ss. 257A, 258—*Adjustment of decree out of Court — Instalment bond.*] A *kistbundi* or instalment bond was executed by way of adjustment of a decree, but this was not certified to the Court in accordance with the provisions of s. 257A and 258 of the Code of Civil Procedure:—*Held*, that a Court executing the decree was not competent to take cognizance of the *kistbundi* under s. 244 of the Code, and that the decree must be executed, notwithstanding the adjustment. *Jhabar Mahomed* v. *Modan Sonahar*, I. L. R. 11 Calc 671, explained and distinguished. RAM DOYAL BANERJEE *v.* RAM HARI PAL.

[I. L. R. 20 Calc. 32

15.—s. 244.—*Separate suit—Uncertified adjustment—Agreement not to execute decree—Suit by judgment-debtor to stay execution—Civil Procedure Code (Act XIV of* 1882), *s.* 258.] The defendant in January 1887 obtained a decree against the plaintiff, which he partially executed, and thereupon an adjustment of account took place between the plaintiff and defendant, in which a certain

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 244—*continued.*

(1) QUESTIONS IN EXECUTION OF DECREE—*concluded.*

sum was found due by the plaintiff to the defendant, for which sum the plaintiff gave a bond to the defendant in consideration of which the defendant agreed to exonerate the plaintiff from liability for the balance due under the decree. This satisfaction of the decree was not certified to the Court. On 12th March 1890 the defendant applied for further execution of the decree. In a suit for a declaration that the defendant had no right to execute the decree, and for an injunction to restrain him from executing it, it was contended that the suit was barred by s. 244 of the Civil Procedure Code:—*Held*, by PIGOT and MACPHERSON, JJ. (BANERJEE, J., dissenting), that s. 244 is not limited by s. 258, and that the suit was not maintainable. Where a decree is satisfied by an agreement out of Court, and such satisfaction is not certified to the Court, a subsequent suit on the agreement is not maintainable if the object of the suit is to restrain the decree-holder from executing his decree in contravention of the agreement. *Per* PIGOT, J.—S. 244 of the Civil Procedure Code does not absolutely bar a suit, but prohibits in a separate suit between the same parties to a decree any relief being granted which interferes with the conduct of the execution-proceedings by the Court executing the decree. *Per* BANERJEE, J.—A suit on the agreement was maintainable. S. 258 of the Civil Procedure Code having enacted that an uncertified adjustment cannot be recognized as an adjustment of the decree by any Court executing the decree implies that it may be recognized as such by a Court trying the matter as a regular suit. AZIZAN *v.* MATUK LAL SAHU.

[I. L. R. 21 Calc. 437

(2) PARTIES TO SUITS.

16.—s. 244.—*Execution of decree—Assignee of decree—Regular suit.*] The assignee of a decree applied for execution; his application was dismissed, and he was never brought on to the record as decree-holder. He now sued for the cancellation of the order refusing execution and for a declaration of his right to execution:—*Held*, that the suit was not precluded by Civil Procedure Code, s 244. RAMAN *v.* MUPPIL NAYAR.

[I. L. R. 14 Mad. 478

17.—s. 244.—*Questions relating to execution—Separate suit.*] A plaintiff, alleging that her husband (deceased) had advanced money on the security of land belonging to a family of four Hindus, sued them to enforce his lien and obtained a decree. The representatives of one of the defendants only appealed, and the decree was reversed as regarded them. The decree was executed as against the other defendants by the attachment and sale of their shares of the land, and the plaintiff became the purchaser. The successful appellants obstructed her in her attempts to obtain possession, and she now sued them for partition of the three-quarters' share

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 244—*continued.*

(2) PARTIES TO SUITS—*continued.*

purchased by her:—*Held*, that the suit was not precluded by Civil Procedure Code, s. 244. NAGAMUTHU *v.* SAVARIMUTHU.

[I. L. R. 15 Mad. 226

18.—s. 244.—"*Party*"—"*Representative of a party*"—*Auction-purchaser—Order in summary inquiry.*] A purchaser at a Court-sale is not a party, or the representative of a party, within the meaning of s. 244 of the Code of Civil Procedure (Act XIV of 1882). He is, therefore, not bound by any order in the miscellaneous inquiry under s. 280, 281, or 282 of the Code. Nor is he bound by the specifications contained in the proclamation of sale of the claims of intervenors. Certain property was attached in execution of a decree. The defendants intervened, and objected to the attachment, on the ground that they held the property on permanent tenancy. Their objection was allowed and the Court made an order, directing the property to be sold, subject to the defendants' rights. In the proclamation of sale, however, it was stated that the Court did not guarantee the title of the intervenors. The plaintiff purchased the property at the Court-sale. He then sued to eject the defendants. The defendants pleaded that the plaintiff had purchased, subject to their rights as permanent tenants. Both the lower Courts rejected the plaintiff's claim, on the ground that he was bound by the order in the miscellaneous inquiry, which had become conclusive by reason of his having omitted to sue within one year from the date of the order:—*Held*, reversing the lower Court's decision, that the order in the miscellaneous inquiry was not binding on the plaintiff as an auction-purchaser. VISHVANATH CHARDU NAIK *v.* SUBRAYA SHIVAPA SHETTI.

[I. L. R. 15 Bom. 290

19.—s. 244.—*Purchaser of rights of Hindu widow—Representative.*] After the death of a childless Hindu widow, a lessee from her of property which had belonged to her husband obtained against her vendees of part of the same property, a decree for damages for wrongfully keeping him out of possession. The effect of the decision was to decree the claim against the estate of the widow, and to exempt from liability the judgment-debtors personally and the property which they had purchased. In execution of the decree the said property was sold and was purchased by the decree-holder; one of the judgment-debtors had died during the execution-proceedings, and her son was duly impleaded as her representative, and he raised no objection to the attachment and sale. Subsequently this son sold his rights and interests in the property; and his vendee sued the decree-holder to recover possession, on the ground that the decree being limited to the estate of the childless Hindu widow, the defendant as purchaser could not acquire by the sale any rights superior to those of the widow; that those rights had expired upon her death, and left nothing to

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 244—*concluded.*

(2) PARTIES TO SUITS—*concluded.*

be sold, and that on her death the property devolved upon the plaintiff's vendor, and had thence passed to the plaintiff:—*Held* that the plaintiff's vendor was a party to the suit within the meaning of s. 244 (*c*) of the Civil Procedure Code, and that he not having objected to the sale in execution of the decree, neither he nor the plaintiff could go behind that sale or claim the property upon any title which he might have asserted in the execution-proceedings; and that the suit was barred by s. 244. *Ram Ghulam* v. *Hazaru Kuar*, I. L. R. 7 All. 547, followed; *Bahori Lal* v. *Gauri Sahai*, I. L. R. 8 All. 626, distinguished; *Mulmantri* v. *Ashfak Ahmad*, I. L. R. 9 All. 605; *Roop Lall Dass* v. *Bekani Meah*, I. L. R. 15 Calc. 437, and *Ravunni Menon* v. *Kunju Nayar*, I. L. R. 10 Mad. 117, referred to. RAGHUBAR DIAL *v.* HAMID JAN.

[I. L. R. 12 All. 73

——, s. 245.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 17 Calc. 631.

——, s. 245B.

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES.

[I. L. R. 15 Bom. 216

——, s. 246.

See SET-OFF—CROSS-DECREES.

[I. L. R. 14 All. 339

——, s. 248.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[I. L. R. 16 Bom. 636

See EXECUTION OF DECREE—NOTICE OF EXECUTION.

[I. L. R. 20 Calc. 370

[I. L. R. 21 Calc. 19

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—GENERALLY.

[I. L. R. 20 Calc. 388

See LIMITATION ACT, 1877, ART. 179—NOTICE OF EXECUTION.

[I. L. R. 15 All. 84

See LIMITATION ACT, 1877, ART. 180.

[I. L. R. 20 Calc. 551

——, s. 253.

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

[I. L. R. 15 Mad. 203

See SURETY — ENFORCEMENT OF SECURITY.

[I. L. R. 13 Mad. 1

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

1.—s. 257A.—*Adjustment of a decree barred by limitation.*] The plaintiff's father had in his lifetime obtained a decree against the first defendant and two other persons. This decree having been partly satisfied, the first defendant and his son, who was no party to the decree, executed a bond for the amount still remaining due. At the date of this bond the decree was barred by limitation. No sanction for the bond was obtained under s. 257A of the Civil Procedure Code. The adjustment was secured under s. 258. The plaintiff now sued upon the bond. On reference to the High Court, *held*, that the bond did not require the sanction of the Court under s. 257A of the Civil Procedure Code (Act XIV of 1882). That section relates to judgment-debts which are still enforceable. SHRIPATRAV *v.* GOVIND NARAYAN.

[I. L. R. 14 Bom. 390

2.—s. 257A, and s. 258, *as amended by Act VII of* 1888, *s.* 27—*Adjustment of a decree, suit upon—Agreement to extend time for enforcing decree by execution.*] On the 16th July 1886, *S* obtained a decree against *K* for Rs. 315 with costs. On the next day *K* paid *S* Rs. 200 in part satisfaction of the decree, and induced *K* to accept a bond by which he (*S*) gave up the costs, and by which *K* was to pay the balance of the decree with interest at the end of eight months. *S* sued upon the bond. *K* contended that the bond was void under s. 257A of the Civil Procedure Code and that the suit would not lie:—*Held*, that the suit would lie. Since the amendment made in s. 258 by Act VII of 1888 such payments or adjustments may be recognized by a Civil Court, except when executing the decree, and, therefore, a suit based upon such a payment or adjustment should be admitted. The concluding clause of s. 258 has no direct bearing on s. 257A, as it relates to a different subject-matter. *Quære*—Whether s. 257A relates exclusively to agreements to extend the time for enforcing decrees by execution, as ruled by the Calcutta High Court, or is applicable to all agreements according to the view taken by the Bombay High Court? *Jhabar Mahomed* v. *Modan Sonahar* I. L. R. 11 Calc, 671; *Madhavrav Anant* v. *Chilu* P. J. for 1881, p. 315; *Ganesh Shivram* v. *Abdullabeg* I. L. R. 8 Bom. 538; *Pandurang Ramchandra* v. *Narayan*, I. L. R. 8 Bom. 300, and *Davlatsing* v. *Pandu* I. L. R. 9 Bom. 176, referred to. SWAMIRAO NARAYAN DESHPANDE *v.* KASHINATH KRISHNA MUTALIK DESAI.

[I. L. R. 15 Bom. 419

3.—s. 257A.—*Agreement to give time for the satisfaction of a judgment-debt—Agreement not enforceable without sanction by the Court.*] Section 257A of the Civil Procedure Code, when it provides that "every agreement to give time for the satisfaction of a judgment-debt shall be void" unless made for consideration and with the sanction of the Court, &c., does not make such agreements illegal, in the sense prohibited by law. It

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 257A—*continued.*

only prevents such agreements being enforced in a Court of Law. Where such an agreement to give time, never sanctioned by the Court as required by s. 257A, formed part of the consideration for a bond, and had actually been enjoyed by the obligee of the bond:—*Held*, that such consideration, not being in its nature illegal, and not having as a fact failed, there was no reason why the obligor should not enforce the terms of the bond. BANK OF BENGAL *v.* VYABHOY GANGJI.

[I. L. R. 16 Bom. 618

4.—s. 257A, and s. 210—*Alteration of decree.*] *Per* EDGE C. J.:—An agreement sanctioned under s. 257A cannot be treated, without anything more, as a decree of the Court, and cannot operate as an order under s. 210, though an order under s. 210 would operate as a sanction under s. 257A. GANDHARAP SINGH *v* SHEODARSHAN SINGH.

[I. L. R. 12 All. 571

5.—s. 257A—*Agreement sanctioned by Court executing decree—Enforcement of agreement in execution.*] An agreement, which has received the sanction of the Court of execution under s. 257 (*a*) of the Civil Procedure Code, that money due under it should be realized as in execution of decree rather than by recourse to a separate suit, may be enforced in execution, the Court which would try the regular suit brought upon such an agreement being the same Court which would execute the decree to enforce its own terms. *Sadasiva Pillai* v. *Ramalinga Pillai*, 5 B. L. R. 383; 24 W. R. 193, relied on. THAKOOR DYAL SINGH *v.* SARJU PERSHAD MISSER.

[I. L. R. 20 Calc. 22

——, s. 258.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[I. L. R. 15 Mad. 302
[I. L. R. 17 Bom. 14
[I. L. R. 20 Calc. 32
[I. L. R. 21 Calc. 437

See s. 257A.

[I. L. R. 15 Bom. 419

See APPEAL—DECREES.

[I. L. R. 14 Mad. 99

See EXECUTION OF DECREE — JOINT DECREE, EXECUTION OF AND LIABILITY UNDER.

[I. L. R. 15 Mad. 343

See LIMITATION ACT, 1877, s. 8.

[I. L. R. 13 Mad. 236

See LIMITATION ACT, 1877, ART. 179—JOINT DECREE—JOINT DECREE-HOLDERS.

[I. L. R. 13 Mad. 236

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 258—*continued.*

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES.

[I. L. R. 21 Calc. 542

See LIMITATION ACT, 1877, ART. 179—STEP IN AID OF EXECUTION.

[I. L. R. 20 Calc. 696
[I. L. R. 12 All. 399

1.—s. 258.—*Decree, adjustment, or satisfaction of — Adjustment after attachment — Civil Procedure Code (Act XIV of* 1882), *s.* 273.] A decree being attached as directed by s. 273 of the Civil Procedure Code, its adjustment subsequent to such attachment cannot be recognized by the Court. GOPAL NANASHET *v.* JOHARIMAL. DADA BALSHET *v.* JOHARIMAL.

[I. L. R. 16 Bom. 522

2.—s. 258.—*Adjustment or satisfaction of decree — Civil Procedure Code Amendment Act (VII of* 1888), *s.* 27—*Recognition of adjustment by a Civil Court, except in execution.*] Where under a bond a decree was adjusted by making a small deduction, and by providing for the payment of the balance as part of the entire amount of the bond:—*Held*, that since the amendment made in s. 258 of the Civil Procedure Code (Act XIV of 1882) by s. 27 of Act VII of 1888 (Act amending the Civil Procedure Code of 1882) such adjustment may be recognized by a Civil Court, except in execution. GHANASHAM LAKSHMANDAS *v.* KASHIRAM NAROBA.

[I. L. R. 16 Bom. 589

3.—s. 258.—*Decree payable by instalments—Limitation—Waiver by decree-holder — Payment out of Court—Act XV of* 1877 (*Limitation Act*), *sch. ii, No.* 179 (6).] An application for execution of a decree payable by instalments was resisted by the judgment-debtor as barred by limitation on the ground that nothing had been paid under the decree, and that the application was made more than three years after the first instalment fell due. The decree-holder pleaded that he had waived the default in payment of the first instalment by accepting such payment shortly afterwards, and that the application was in time, having been made within three years from the date when the second instalment was due:—*Held* that the decree-holder could not raise this plea, as the payment in question had not been certified to the Court executing the decree, and therefore could not, under s. 258 of the Civil Procedure Code, be recognized. *Sham Lal* v. *Kanahia Lal*, I. L. R. 4 All. 316, and *Zahur Husain* v. *Bakhtawar*, I. L. R. 7 All. 317, not followed. MITTHU LAL *v.* KHAIRATI LAL.

[I. L. R. 12 All. 569

4.—s. 258, and s. 283.—*Execution of decree—Attachment—Previous assignment in satisfaction of decree of third party—Suit by assignee to establish right to attached property.*] Where a regular

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 258—*continued.*

suit under s. 283 of the Code of Civil Procedure was brought to establish the plaintiff's right to certain attached property on the allegation that the property attached had been transferred to him in satisfaction of a decree held by him against the judgment-debtor:—*Held* that it was not necessary that such transfer should be certified under the provisions of s. 258 of the Code of Civil Procedure. The prohibition to take cognizance of adjustments and payments referred to in s. 258 above-mentioned relates only to the Court executing the decree. KALYAN SINGH *v.* KAMTA PRASAD.

[I. L. R. 13 All. 339

——, s. 265.

See PARTITION—JURISDICTION OF CIVIL COURT IN CASES RESPECTING PARTITION.

[I. L. R. 15 Bom. 527

[I. L. R. 16 Bom. 528

——, s. 266.

See CASES UNDER ATTACHMENT—SUBJECTS OF ATTACHMENT.

——, s. 267.

See EXECUTION OF DECREE—MODE OF EXECUTION—COSTS.

[I. L. R. 17 Bom. 514

——, s. 268.

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

[I. L. R. 15 All. 134

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS.

[I. L. R. 13 All. 76

See LIMITATION ACT, 1877, s. 15.

[I. L. R. 13 All. 76

[I. L. R. 14 All. 162

——, s. 272.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.

[I. L. R. 17 Bom. 14

[I. L. R. 20 Calc. 32

See ATTACHMENT—SUBJECTS OF ATTACHMENT—LETTERS IN POST OFFICE.

[I. L. R. 13 Mad. 242

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

[I. L. R. 21 Calc. 85

See RIGHT OF SUIT—ORDERS, SUITS TO SET ASIDE.

[I. L. R. 19 Calc. 286

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 273.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DECREES.

[I. L. R. 16 Bom. 522

——, s. 274.

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

[I. L. R. 13 All. 119

[I. L. R. 15 All. 134

[I. L. R. 20 Calc. 805

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[I. L. R. 16 Bom. 91

——, s. 276.

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[I. L. R. 16 Bom. 91

See SALE IN EXECUTION OF DECREE—STAY OF SALE.

[I. L. R. 14 Mad. 277

——, s. 278.

See ATTACHMENT — LIABILITY FOR WRONGFUL ATTACHMENT.

[I. L. R. 17 Calc. 436

See CASES UNDER CLAIM TO ATTACHED PROPERTY.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 14 Bom. 369

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[I. L. R. 14 All. 417

——, ss. 278—283.

See s. 244.—QUESTIONS IN EXECUTION OF DECREE.

[I. L. R. 17 Calc. 711

[I. L. R. 12 All. 313

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[I. L. R. 12 All. 313

See RIGHT OF SUIT—ORDERS, SUITS TO SET ASIDE.

[I. L. R. 19 Calc. 286

——, s. 280.

See s. 244—PARTIES TO SUITS.

[I. L. R. 15 Bom. 290

See DEBTOR AND CREDITOR.

[I. L. R. 16 Bom. 1

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 281.

See CLAIM TO ATTACHED PROPERTY.
[I. L. R. 17 Calc. 260
[I. L. R. 18 Calc. 290

See LIMITATION ACT, 1877, ART. 11.
[I. L. R. 17 Calc. 260

——, ss. 281-282.

See s. 244—PARTIES TO SUITS.
[I. L. R. 15 Bom. 290

See DEBTOR AND CREDITOR.
[I. L. R. 16 Bom. 1

——, s. 282.

See LIMITATION ACT, 1877, ART. 11.
[I. L. R. 17 Bom. 629

——, s. 283.

See s. 258.
[I. L. R. 13 All. 339

See ATTACHMENT — LIABILITY FOR WRONGFUL ATTACHMENT.
[I. L. R. 17 Calc. 436

See CLAIM TO ATTACHED PROPERTY.
[I. L. R. 18 Calc. 296

See DEBTOR AND CREDITOR.
[I. L. R. 16 Bom. 1

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.
[I. L. R., 16 Mad. 140

See FRAUD—PLEADING OR ALLEGING ONE'S OWN FRAUD.
[I. L. R. 17 Bom. 94

See LIMITATION ACT, 1877, ART 11.
[I. L. R. 13 Mad. 366

See MULTIFARIOUSNESS.
[I. L. R. 11 Bom. 608

See ONUS PROBANDI—CLAIM TO ATTACHED PROPERTY.
[I. L. R. 17 Bom. 94

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE.
[I. L. R. 14 Bom. 206

See RES JUDICATA—PARTIES OR THEIR REPRESENTATIVES.
[I. L. R. 15 Mad. 477

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.
[I. L. R. 15 All. 405

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 285.

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.
[I. L. R. 21 Calc. 200

See SALE IN EXECUTION OF DECREE—INVALID SALES—WANT OF JURISDICTION.
[I. L. R. 19 Calc. 651

——, s. 287.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[I. L. R. 14 Bom. 369

——, s. 289.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R. 18 Calc. 422

——, s. 290.

See SALE IN EXECUTION OF DECREE—BIDDERS.
[I. L. R. 14 Mad. 235

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R. 21 Calc. 66

——, s. 291.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R. 17 Calc. 152
[I. L. R. 18 Calc. 496

——, s. 292.

See PLEADER—PURCHASE BY PLEADER AT SALE IN EXECUTION OF DECREE.
[I. L. R. 15 Mad. 389

——, s. 293.

See APPEAL—SALE IN EXECUTION OF DECREE.
[I. L. R. 13 All. 564
[I. L. R. 14 All. 201

——, s. 294.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R. 14 Mad. 498

——, s. 295.

See APPEAL—DECREES.
[I. L. R. 14 All. 210

See INSOLVENT ACT, s. 7.
[I. L. R. 15 Mad. 372

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 295—*continued.*

See LIMITATION ACT, 1877, ART. 13.
[I. L. R. 15 Bom. 438

See LIMITATION ACT, 1877, ART. 179—LAW APPLICABLE TO APPLICATIONS FOR EXECUTION.
[I. L. R. 17 Calc. 491

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.
[I. L. R. 12 All. 546

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — IRREGULARITY.
[I. L. R. 15 All. 318
[I. L. R. 20 Calc. 673

——, s. 305.

See SALE IN EXECUTION OF DECREE—STAY OF SALE.
[I. L. R. 14 Mad. 277

——, s. 306.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R. 14 Mad. 227

——, s. 308, order under.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.
[I. L. R. 16 Mad. 20

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R. 16 Mad. 20

——, s. 311.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.
[I. L. R. 17 Calc. 769
[I. L. R. 18 Calc. 139
[I. L. R. 19 Calc. 341

See PLEADER—PURCHASE BY PLEADER AT SALE IN EXECUTION OF DECREE.
[I. L. R. 15 Mad. 389

See SALE IN EXECUTION OF DECREE—INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.
[I. L. R. 12 All. 440

See CASES UNDER SALE IN EXECUTION OF DECREE — SETTING ASIDE SALE—IRREGULARITY.

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 312.

See s. 244—QUESTIONS IN EXECUTION OF DECREE.
[I. L. R. 17 Calc. 769
[I. L. R. 18 Calc. 139

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — IRREGULARITY.
[I. L. R. 20 Calc. 8

See SPECIAL APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R. 18 Calc. 422

——, s. 313.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.
[I. L. R. 20 Calc. 8

——, s. 315.

See APPEAL—SALE IN EXECUTION OF DECREE.
[I. L. R. 12 All. 397

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS, &c.
[I. L. R. 13 All. 383
[I. L. R. 16 Mad. 361

——, s. 316.

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—CERTIFICATES OF SALE.
[I. L. R. 17 Bom. 375

——, s. 317.

See CASES UNDER BENAMI TRANSACTION—CERTIFIED PURCHASERS.

——, s. 318.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUIT.
[I. L. R. 13 Mad. 504

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.
[I. L. R. 15 Mad. 203

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &c.
[I. L. R. 17 Bom. 718

See LIMITATION ACT, 1877, ART. 167.
[I. L. R. 13 Mad. 504

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 320.

See RULES MADE UNDER ACTS.

[I. L. R. 15 Bom. 322
[I. L. R. 12 All. 564

——, s. 328.

See APPEAL—ORDERS.

[I. L. R. 16 Mad. 127

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[I. L. R. 16 Mad. 127

——, s. 329.

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 16 Bom. 711 note

——, s. 331.

See DISTRICT JUDGE, JURISDICTION OF.

[I. L. R. 14 Bom. 627

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See RES JUDICATA—COMPETENT COURT.

[I. L. R. 14 All. 417

See VALUATION OF SUIT—APPEALS.

[I. L. R. 13 Mad. 520

——, ss. 332, 333.

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &C.

[I. L. R. 17 Bom. 718

——, s. 336.

See APPEAL—ORDERS.

[I. L. R. 15 All. 183

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 15 All. 183

See SURETY—DISCHARGE OF SURETY.

[I. L. R. 15 All. 183

See SURETY—LIABILITY OF SURETY.

[I. L. R. 13 All. 100

——, s. 341.

See ATTACHMENT—ATTACHMENT OF PERSON.

[I. L. R. 20 Calc. 874

See LIMITATION ACT, 1877, ART. 179— NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS.

[I. L. R. 12 All. 64

CIVIL PROCEDURE CODE (ACT XIV OF 1882—*continued.*

——, s. 342.

See IMPRISONMENT.

[I. L. R. 13 Mad. 141

——, s. 344.

See APPEAL—ORDERS.

[I. L. R. 15 All. 183
[I. L. R. 15 Mad. 89

See INSOLVENCY — ASSIGNMENT BY DEBTOR.

[I. L. R. 16 Mad. 499

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 15 All. 183

See SURETY—DISCHARGE OF SURETY.

[I. L. R. 15 All. 183

See SURETY—LIABILITY OF SURETY.

[I. L. R. 13 All. 100

——, ss. 344—360 (Ch. XX.)

See CASES UNDER INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

——, s. 350.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[I. L. R. 14 All. 145

——, s. 351.

See INSOLVENCY — ASSIGNMENT BY DEBTOR.

[I. L. R. 16 Mad. 499

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[I. L. R. 14 All. 358

——, s. 356.

See RECEIVER.

[I. L. R. 15 Mad. 233

——, s. 359.

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[I. L. R. 14 All. 145

——, ss. 361—372 (Ch. XXI).

See MAMLATDAR, JURISDICTION OF.

[I. L. R. 17 Bom. 645

——, s. 365.

See LIMITATION ACT 1877, ART. 179— NATURE OF APPLICATION—GENERALLY.

[I. L. R. 20 Calc. 755

See PARTIES—SUBSTITUTION OF PARTIES —PLAINTIFFS.

[I. L. R. 15 Bom. 145

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

———, s. 366.

See LIMITATION ACT 1877, ART. 179—NATURE OF APPLICATION—GENERALLY.

[I. L. R. 20 Calc. 755

———, s. 367.

See PARTIES—SUBSTITUTION OF PARTIES—PLAINTIFFS.

[I. L. R. 15 Bom. 145

See RIGHT OF APPEAL.

[I. L. R. 12 All. 200

———, s. 368.

See LIMITATION ACT, 1877, ART. 175C.

[I. L. R. 16 Bom. 27

See PARTIES—SUBSTITUTION OF PARTIES—DEFENDANTS.

[I. L. R. 15 Mad. 399

———, s. 370.

See DECREE—ALTERATION OR AMENDMENT OF DECREE.

[I. L. R. 16 Bom. 404

———, s. 372.

See LIMITATION ACT, 1877, ART. 175C.

[I. L. R. 16 Bom. 27

———, s. 373.

See APPEAL—DECREES.

[I. L. R. 18 Calc. 322

[I. L. R. 15 All. 169

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 18 Calc 462, 515, 635

[I. L. R. 15 Mad. 240

[I. L. R. 15 Bom. 370

[I. L. R. 12 All. 179, 392

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE.

[I. L. R. 13 All. 564

See RES JUDICATA—RELIEF NOT GRANTED.

[I. L. R. 21 Calc. 265

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 15 All. 169

———, s. 374.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 18 Calc. 515

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

———, s. 375.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[I. L. R. 16 Bom. 202

[I. L. R. 14 All. 141

See SPECIFIC PERFORMANCE—SPECIFIC PERFORMANCE ALLOWED.

[I. L. R. 13 Mad. 316

———, s. 380.

See SECURITY FOR COSTS—SUITS.

[I. L. R. 17 Calc. 610

[I. L. R. 21 Calc. 177

———, s. 392.

See LOCAL INVESTIGATION.

[I. L. R. 16 Mad. 350

———, s. 396.

See APPEAL—DECREES.

[I. L. R. 19 Calc. 463

———, ss. 401—415 (Ch. XXVI.)

See PAUPER SUIT—SUITS.

[I. L. R. 20 Calc. 319

———, s. 411.

See PAUPER SUIT—APPEALS.

[I. L. R. 13 All. 326

See PAUPER SUIT—SUITS.

[I. L. R. 14 Mad. 163

———, s. 412.

See PAUPER SUIT—APPEALS.

[I. L. R. 13 All. 326

See PAUPER SUIT—SUITS.

[I. L. R. 15 Bom. 77

———, s. 424.

See POLICE-OFFICER.

[I. L. R. 14 Bom. 395

———, s. 433.

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.

[I. L. R. 15 Mad. 494

———, s. 435.

See PLAINT—VERIFICATION AND SIGNATURE.

[I. L. R. 21 Calc. 60

———, s. 437.

See PARTIES—ADDING PARTIES TO SUITS—DEFENDANTS.

[I. L. R. 13 Mad. 197

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 443.

See LUNATIC.

[I. L. R. 16 Bom. 132

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 16 Mad. 344

——, s. 445.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 17 Calc. 488

——, s. 463.

See LUNATIC.

[I. L. R. 16 Bom. 132

——, s. 464.

See LUNATIC.

[I. L. R. 14 Mad. 289

See MISJOINDER.

[I. L. R. 13 Mad. 197

——, s. 477.

See WITHDRAWAL OF SUIT.

[I. L. R. 15 Bom. 160

——, s. 483.

See ATTACHMENT — LIABILITY FOR WRONGFUL ATTACHMENT.

[I. L. R. 17 Calc. 436

——, ss. 485, 486.

See LIMITATION ACT, 1877, s. 15.

[I. L. R. 14 All. 162

——, s. 491.

See WITHDRAWAL OF SUIT.

[I. L. R. 15 Bom. 160

——, s. 496.

See APPEAL—ORDERS.

[I. L. R. 15 All. 8

——, s. 503.

See APPEAL—RECEIVERS.

[I. L. R. 17 Calc. 680

See CASES UNDER RECEIVER.

——, s. 505.

See APPEAL—RECEIVERS.

[I. L. R. 17 Calc. 680

——, s. 508.

See ARBITRATION—AWARDS.

[I. L. R. 13 All. 300

See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.

[I. L. R. 17 Calc 832

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

——, s. 510.

See ARBITRATION — REFERENCE OR SUBMISSION TO ARBITRATION.

[I. L. R. 18 Calc. 324

——, s. 514.

See ARBITRATION—AWARDS.

[I. L. R. 15 Mad. 384

[I. L. R. 13 All. 300

[I. L. R. 14 All. 343, 347

——, s. 520.

See ARBITRATION—PRIVATE ARBITRATION.

[I. L. R. 21 Calc. 213

——, s. 521.

See ARBITRATION—AWARDS.

[I. L. R. 15 Mad. 384

[I. L. R. 13 All. 300

[I. L. R. 14 All. 343, 347

See ARBITRATION—PRIVATE ARBITRATION.

[I. L. R. 21 Calc. 213

——, s. 522.

See APPEAL—ARBITRATION.

[I. L. R. 15 Mad. 348

[I. L. R. 13 All. 366

——, s. 523.

See ARBITRATION—REVOCATION OF OR WITHDRAWAL FROM ARBITRATION.

[I. L. R. 17 Calc. 200

——, s. 525.

See APPEAL—ARBITRATION.

[I. L. R. 13 All. 366

See ARBITRATION—PRIVATE ARBITRATION.

[I. L. R. 15 Mad. 474

[I. L. R. 17 Bom. 674

[I. L. R. 21 Calc. 213

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—LOST OR DESTROYED DOCUMENTS.

[I. L. R. 15 Mad. 99

See RES JUDICATA—ADJUDICATIONS.

[I. L. R. 18 Calc. 414

See RIGHT OF SUIT—AWARDS.

[I. L. R. 15 Mad. 99

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 525—*continued.*

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—AWARDS.

[I. L. R. 13 Mad. 344

——, s. 526.

See ARBITRATION—PRIVATE ARBITRATION.

[I. L. R. 21 Calc. 213

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—AWARDS.

[I. L. R. 13 Mad. 344

——, s. 539.

See ENDOWMENT.

[I. L. R. 14 Mad. 1

See CASES UNDER RIGHT OF SUIT—CHARITIES.

——, s. 540.

See APPEAL—COSTS.

[I. L. R. 16 Bom. 676

[I. L. R. 13 All. 290

——, ss. 540—587 (Chaps. XLI and XLII).

See REMAND—POWER OF REMAND.

[I. L. R. 16 Mad. 299

——, s. 541.

See LIMITATION ACT, 1877, s. 4.

[I. L. R. 12 All. 129

See PLEADER—APPOINTMENT AND APPEARANCE.

[I. L. R. 16 Mad. 285

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R. 15 All. 123

——, s. 542.

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[I. L. R. 13 All. 381

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R. 15 All. 123

——, s. 543.

See SPECIAL APPEAL—ADMISSION OR SUMMARY REJECTION OF APPEAL.

[I. L. R. 15 All. 367

——, s. 544.

See LIMITATION ACT, 1877, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—WHERE THERE HAS BEEN AN APPEAL.

[I. L. R. 13 All. 1

CIVIL PROCEDURE CODE (ACT XIV OF 1882). s. 544—*continued.*

See MADRAS RENT RECOVERY ACT, s. 9.

[I. L. R. 13 Mad. 248

——, s. 544—*Reversal of whole decree on appeal by one party—Appeal by two persons—Withdrawal of one appellant from appeal.*] A decree was passed for the plaintiff in a suit to redeem a *kanom* brought against various persons most of whom disclaimed all interest. An appeal was preferred by one of the defendants who claimed to be the *jenmi* of the premises comprised in the *kanom* and another who held a *kanom* from him. The first mentioned appellant withdrew from the appeal which, however, was prosecuted by the other, and the Appellate Court reversed the decree:—*Held*, that since the appellants were the only substantial defendants the Appellate Court was right in allowing the appeal to proceed. SRIMANA VIKRAMAN *v.* RAYAN.

[I. L. R. 16 Mad. 293

——, s. 545.

See EXECUTION OF DECREE—STAY OF EXECUTION.

[I. L. R. 15 Bom. 536

——, 546.

See EXECUTION OF DECREE—STAY OF EXECUTION.

[I. L. R. 15 All. 196

See SURETY—ENFORCEMENT OF SECURITY.

[I. L. R. 13 Mad. 1

——, s. 549.

See CASES UNDER SECURITY FOR COSTS—APPEALS.

——, s. 551.

See SPECIAL APPEAL—ADMISSION OR SUMMARY REJECTION OF APPEAL.

[I. L. R. 15 All. 367

——, s. 556.

See APPEAL—DEFAULT IN APPEARANCE.

[I. L. R. 16 Bom. 23

[I. L. R. 15 All. 359

See LETTERS PATENT, HIGH COURT, N. W. P. CL. 10.

[I. L. R. 14 All. 361

[I. L. R. 15 All. 359

——, s. 558.

See LETTERS PATENT, HIGH COURT, N. W. P. CL. 10.

[I. L. R. 14 All. 361

[I. L. R. 15 All. 359

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

———, s. 559.

See PARTIES — ADDING PARTIES TO SUITS—RESPONDENTS.

[I. L. R. 15 Mad. 362
[I. L. R. 13 All. 78

———, s. 561.

See APPEAL—OBJECTIONS BY RESPONDENT.

[I. L. R. 13 Mad. 492
[I. L. R. 14 Bom. 111

———, s. 562.

See JUDGMENT—CIVIL CASES.

[I. L. R. 13 All. 533

See REMAND—CASES OF APPEAL AFTER REMAND.

[I. L. R. 17 Calc. 168
[I. L. R. 15 All. 119, 413
[I. L. R. 14 Bom. 14

See REMAND—POWER OF REMAND.

[I. L. R. 12 All. 510
[I. L. R. 16 Mad. 207
[I. L. R. 17 Bom. 733

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R. 15 All. 119, 413

———, s. 564.

See REMAND—CASES OF APPEAL AFTER REMAND.

[I. L. R. 12 All. 510

See REMAND—POWER OF REMAND.

[I. L. R. 12 All. 510

———, s. 566.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES.

[I. L. R. 15 All. 315

See ISSUES—FRESH OR ADDITIONAL ISSUES.

[I. L. R. 14 All. 366

See REMAND—PROCEDURE ON REMAND.

[I. L. R. 14 All. 23

———, s. 567.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES.

[I. L. R. 15 All. 315

See ISSUES—FRESH OR ADDITIONAL ISSUES.

[I. L. R. 14 All. 366

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*continued.*

———, s. 568.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

[I. L. R. 21 Calc. 484

See APPELLATE COURT—EVIDENCE AND ADDITIONAL EVIDENCE ON APPEAL.

[I. L. R. 21 Calc. 484

See REMAND—POWER OF REMAND.

[I. L. R. 17 Bom. 733

———, s. 569.

See REMAND—POWER OF REMAND.

[I. L. R. 17 Bom. 733

———, s. 574.

See JUDGMENT—CIVIL CASES.

[I. L. R. 17 Bom. 428

———, s. 575 — *Composition of Bench to hear appeal referred to a third Judge under s. 575 of the Civil Procedure Code—Judges differing in opinion.*] *Quære:* Whether where there is a difference of opinion between the two Judges of a Divisional Bench who have delivered judgment on the matter of the appeal, the reference to a third Judge under s. 575 of the Civil Procedure Code should be heard by the third Judge sitting separately, or by a Bench composed of the third Judge and the two Judges who first heard the appeal and differed in opinion. *Rohilkhand and Kumaon Bank* v. *Row*, I. L. R. 6 All. 468, referred to. *Per* WEIR, J.—The language of s. 575 does not imply that the appeal must *necessarily* be heard again at the reference by the two Judges who first heard it and differed. SUBBAYYA *v.* KRISHNA.

[I. L. R. 14 Mad. 186

———, s. 577.

See COMPROMISE—COMROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[I. L. R. 14 All. 350

———, s. 578.

See APPELLATE COURT—OTHER ERRORS AFFECTING MERITS OF SUIT.

[I. L. R. 15 All. 380
[I. L. R. 17 Calc. 155

———, s. 582.

See s. 54.

[I. L. R. 12 All. 129

See APPEAL—DECREES.

[I. L. R. 16 Mad. 285

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—ARBITRATION REFERENCE TO.

[I. L. R. 18 Calc. 507

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 582—*continued.*

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[I. L. R. 14 All. 226

See RIGHT OF APPEAL.

[I. L. R. 12 All. 200

See SPECIAL APPEAL—ADMISSION OR SUMMARY REJECTION OF APPEAL.

[I. L. R. 15 All. 367

See SPECIAL APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R. 14 Mad. 462.

——, s. 583.

See RESTITUTON OF RIGHTS BY MOTION.

[I. L. R. 21 Calc. 340

See SURETY—ENFORCEMENT OF SECURITY.

[I. L. R. 13 Mad. 1

——, s. 584.

See CASES UNDER SPECIAL APPEAL.

——, ss. 584-585.

See SPECIAL APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT.

[I. L. R. 20 Calc. 93

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R. 17 Calc. 291
[I. L. R. 15 All. 123

——, s. 586.

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—DAMAGES, SUITS FOR.

[I. L. R. 15 Mad. 298

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—GENERAL CASES.

[I. L. R. 15 Mad. 98
[I. L. R. 12 All. 579, 581
[I. L. R. 21 Calc. 249

——, s. 587.

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[I. L. R. 15 All. 359

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R. 15 All. 123

——, s. 588.

See APPEAL—ACTS—BENGAL TENANCY ACT.

[I. L. R. 19 Calc. 485

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 588—*continued.*

See APPEAL—DECREES.

[I. L. R. 18 Calc. 322
[I. L. R. 14 Mad. 99

See APPEAL—ORDERS.

[I. L. R. 15 Mad. 89
[I. L. R. 15 All. 8

See APPEAL—PROBATE.

[I. L. R. 17 Calc. 48

See APPEAL—RECEIVERS.

[I. L. R. 17 Calc. 680

See LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

[I. L. R. 15 All. 359

See REMAND—CASES OF APPEAL AFTER REMAND.

[I. L. R. 14 Bom. 232
[I. L. R. 12 All. 510

See SPECIAL APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R. 14 Mad. 462

——, s. 590.

See REMAND—CASES OF APPEAL AFTER REMAND.

[I. L. R. 14 Bom. 232

——, s. 591.

See REMAND—CASES OF APPEAL AFTER REMAND.

[I. L. R. 12 All. 510
[I. L. R. 15 All. 119

See RIGHT OF APPEAL.

[I. L. R. 12 All. 200

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R. 15 All. 119

——, s. 595.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.

[I. L. R. 13 Mad. 349
[I. L. R. 14 Bom. 428
[I. L. R. 15 Bom. 155

——, s. 596.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[I. L. R. 15 Mad. 237

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 596—*continued.*

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.
[I. L. R. 21 Calc. 484, 523

——, s. 599.

See LIMITATION ACT, 1877, ART. 177.
[I. L. R. 15 All. 14

——, s. 600.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.
[I. L. R. 21 Calc. 523

——s. 601.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.
[I. L. R. 15 Bom. 155

——s. 608.

See LETTERS PATENT, HIGH COURT, CL. 15.
[I. L. R. 21 Calc. 473

——s. 610.

See APPEAL—ORDERS.
[I. L. R. 15 Mad. 203

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.
[I. L. R. 20 Calc. 105

——s. 617.

See REFERENCE TO HIGH COURT—CIVIL CASES.
[I. L. R. 17 Bom. 735

——s. 622.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.
[I. L. R. 17 Bom. 49

See APPELLATE COURT—INTERFERENCE WITH AND POWER TO VARY ORDER OF LOWER COURT.
[I. L. R. 16 Mad. 476

See CERTIFICATE OF ADMINISTRATION—CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827.
[I. L. R. 16 Bom. 708

See JUDGMENT—CIVIL CASES.
[I. L. R. 13 All. 533

See LETTERS PATENT, HIGH COURT, CL. 15.
[I. L. R. 14 Mad. 406

See PAUPER SUIT—SUITS.
[I. L. R. 15 Bom. 77

CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 622—*continued.*

See REVISION — CIVIL CASES — SMALL CAUSE COURT CASES.
[I. L. R. 15 All. 139

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — IRREGULARITY.
[I. L. R. 20 Calc. 8

See SPECIAL APPEAL — SMALL CAUSE COURT SUITS—GENERAL CASES.
[I. L. R. 20 Calc. 8

See CASES UNDER SUPERINTENDENCE OF HIGH COURT — CIVIL PROCEDURE CODE, s. 622.

——s. 623.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R. 15 Bom. 594

——, s. 624.

See REVIEW—REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE.
[I. L. R. 14 Bom. 101
[I. L. R. 16 Bom. 603

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS AND REVIEWS.
[I. L. R. 13 Mad. 178

——, s. 626C.

See REVIEW—REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE.
[I. L. R. 16 Bom. 603

——, s. 632.

See LETTERS PATENT, HIGH COURT N. W. P., CL. 10.
[I. L. R. 14 All. 226
[I. L. R. 15 All. 359

——, s. 638.

See s. 54.
[I. L. R. 12 All. 129

——, s. 640.

See COMMISSION—CIVIL CASES.
[I. L. R. 14 Bom. 584

——, s. 642.

See ARREST—CIVIL ARREST.
[I. L. R. 13 Mad. 150

——, s. 646B.

See REFERENCE TO HIGH COURT—CIVIL CASES.
[I. L. R. 13 Mad. 344
[I. L. R. 21 Calc. 249

CIVIL PROCEDURE CODE ACT (XIV OF 1882), s. 646B.—*concluded.*

See SPECIAL APPEAL—SMALL CAUSE COURT SUITS—GENERAL CASES.

[I. L. R. 21 Calc. 249

——, s. 647.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 18 Calc. 462, 515, 635

[I. L. R. 15 Mad. 240

[I. L. R. 12 All. 179, 392.

See EXECUTION OF DECREE—EXECUTION AFTER APPEAL OR REVIEW.

[I. L. R. 16 Bom. 550

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[I. L. R. 13 All. 583

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[I. L. R. 21 Calc. 479

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[I. L. R. 15 All. 49

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[I. L. R. 17 Bom. 162

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[I. L. R. 20 Calc. 105

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[I. L. R. 17 Calc. 699

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[I. L. R. 18 Calc. 496

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See CIVIL PROCEDURE CODE, s. 257A.

[I. L. R. 15 Bom. 419

See CIVIL PROCEDURE CODE, s. 258.

[I. L. R. 16 Bom. 589

——, s. 30.

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[I. L. R. 15 Bom. 322

[I. L. R. 12 All. 564

CIVIL PROCEDURE CODE AMENDMENT ACT (VII OF 1888)—*concluded.*

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See APPEAL—OBJECTIONS BY RESPONDENT.

[I. L. R. 13 Mad. 492

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[I. L. R. 16 Mad. 207

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[I. L. R. 15 All. 14

——, s. 59.

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[I. L. R. 16 Bom. 603

——, s. 60.

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[I. L. R. 21 Calc. 249

See SPECIAL APPEAL — SMALL CAUSE COURT SUITS—GENERAL CASES.

[I. L. R. 21 Calc. 249

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——, s. 3.

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[I. L. R. 15 All. 117

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[I. L. R. 15 All. 84

See RES JUDICATA — JUDGMENTS ON PRELIMINARY POINTS.

[I. L. R. 15 All. 49, 84

CLAIM TO ATTACHED PROPERTY.

See APPEAL—EXECUTION OF DECREE—QUESTIONS IN EXECUTION.

[I. L. R. 12 All. 313

See ATTACHMENT — LIABILITY FOR WRONGFUL ATTACHMENT.

[I. L. R. 17 Calc. 436

See CIVIL PROCEDURE CODE, s. 244—PARTIES TO SUITS.

[I. L. R. 15 Bom. 290

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[I. L. R. 17 Calc. 711

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CLAIM TO ATTACHED PROPERTY— *continued.*

See LIMITATION ACT, 1877, ART. 11.

[I. L. R. 17 Calc. 260

See ONUS PROBANDI—CLAIM TO ATTACHED PROPERTY.

[I. L. R. 17 Bom. 94

1.—*Application by person holding claim—Form of application—Circular Order of High Court, Bombay, No.* 90 (*c*)—*Court Fees Act, Sch. II, cl.* 1—*Notices to judgment-debtor.*] A person holding a claim on property ordered to be sold in execution of a decree is required to make the application contemplated in the High Court's Civil Circular No. 90 (*c*), page 50, of the "Circular Orders." The application must be in writing and bear the proper fee prescribed by Schedule II, No. 1, of the Court Fees Act (VII of 1870). The Circular does not require any notice to be served on the judgment-debtor. Whether he is bound by the order passed in the proceedings must depend on the facts of each case. LACHMICHAND HIRACHAND *v.* TUKARAM.

[I. L. R. 16 Bom. 700

2.—*Civil Procedure Code*, 1882, *s.* 281—*Order disallowing claim to attached property.*] The effect of an order made under s. 281, of the Civil Procedure Code, disallowing a claim to attached property, is to give the auction-purchaser a title as against the claimant, unless the order is set aside by a suit. KHUB LAL *v.* RAM LOCHUN KOER.

[I. L. R. 17 Calc. 260

3.—*Property attached in possession of some person in trust for the judgment-debtor—Code of Civil Procedure* (*Act XIV of* 1882), *ss.* 278, 281.] Certain property was attached in the hands of the petitioner (who had preferred a claim under s. 278 of the Code of Civil Procedure), on the ground that he had become a trustee for the judgment-debtor by virtue of an alleged agreement on his part to discharge the decree-holder's debt contained in a *hibanama* by which the judgment-debtor had transferred the property to him. The petitioner having obtained a rule under s. 622 of the Code, *held*, that the property having been transferred to the petitioner and being now admittedly his property, the lower Court had acted without jurisdiction in directing execution to issue against the property. *Per* AMEER ALI, J.:—When a claim is preferred under s. 278, what the Court has to see is whether the property, though standing in the name of the claimant or of some other person, is in the possession of the judgment-debtor or not. The mere fact that the judgment-debtor has some beneficial interest in the income would not render the property liable under s. 281. If the claimant satisfies the Court that he has some interest in, or is possessed of, the property attached, and it does not appear that the possession of the claimant was in reality that of the judgment-debtor, the claim must be allowed. SHEORAJ NANDAN SINGH *v.* GOPAL SURAN NARAIN SINGH.

[I. L. R. 18 Calc. 290

CLAIM TO ATTACHED PROPERTY— *concluded.*

4.—*Claim to attached property in Calcutta Court of Small Causes—Attachment—Suit in High Court by unsuccessful claimant—Right of suit—Res judicata—Code of Civil Procedure* (*XIV of* 1882), *ss.* 278, 283—*Presidency Small Cause Courts Act* (*XV of* 1882), *ss.* 9, 23 *and* 37—*Act X of* 1888, *s.* 2.] An order made upon a claim to attached property filed in the Small Cause Court of Calcutta under s. 278 of the Civil Procedure Code, 1882, is an order in the suit within the meaning of the Presidency Small Cause Courts Act, 1882, s. 37, and is final, subject only to the right to apply for a new trial. Where such a claim has been disallowed, a suit brought under s. 283 of the Civil Procedure Code by the person against whom that order has been passed to establish the right which he claims to the property in dispute is not maintainable in any Court. The exclusion by the Small Cause Court, under the powers conferred on it by s. 23 of the Presidency Small Cause Courts Act, 1882, of s. 283 of the Civil Procedure Code, has not been affected by Act X of 1888. ISMAIL SOLOMON BHAMJI *v.* MAHOMED KHAN.

[I. L. R. 18 Calc. 296

CLUB.

———, *Suit for price of goods supplied by Club to a member—Right of suit—Secretary of Club.*] An action to recover the price of goods supplied to a member of a non-proprietary club, or on his responsibility cannot be brought in the name of the secretary of the club. MICHAEL *v.* BRIGGS.

[I. L. R. 14 Mad. 362

CO-DEFENDANT.

See INSPECTION OF DOCUMENTS.

[I. L. R. 17 Bom. 384

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[I. L. R. 14 Mad. 324

[I. L. R. 15 Mad. 264

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See HINDU LAW—ADOPTION—WHO MAY ADOPT.

[I. L. R. 13 Mad. 214

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[I. L. R. 16 Bom. 283

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[I. L. R. 16 Bom. 586

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[I. L. R. 18 Calc. 99

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[I. L. R. 18 Calc. 234

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[I. L. R. 18 Calc. 234

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[I. L. R. 17 Calc. 944

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[I. L. R. 17 Calc. 872

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[I. L. R. 15 Bom. 77

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[I. L. R. 21 Calc. 70

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[I. L. R. 18 Calc. 271

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[I. L. R. 16 Bom. 537, 731
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[I. L. R. 15 Bom. 424

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[I. L. R. 14 Mad. 82

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[I. L. R. 12 All. 564
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[I. L. R. 17 Calc. 80

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[I. L. R. 18 Calc. 506

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[I. L. R. 13 Mad. 485

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[I. L. R. 16 Mad. 333

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[I. L. R. 15 Bom. 322

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[I. L. R. 15 Bom. 694

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[I. L. R. 15 Mad. 259

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See BOMBAY CIVIL COURTS ACT, s. 16.
[I. L. R. 16 Bom. 277

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[I. L. R. 14 Bom. 371

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[I. L. R. 20 Calc. 940

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[I. L. R. 15 Mad. 350

——, Revision of order of—

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[I. L. R. 12 All. 198

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[I. L. R. 14 Mad. 44

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[I. L. R. 15 Bom. 441

1—*Execution of decree for partition—Collector, power of, to refuse execution—Ultra vires.*] The plaintiffs obtained a decree against the defendants for partition and possession of their share in the lands in the village of Kasai. That decree was sent for execution to the Collector. In the meantime a revision survey had been introduced into the village, under which the designation of some of the lands directed to be partitioned was

COLLECTOR—*concluded.*

changed from *khoti* to *dhara* lands. The Collector proposed to partition them, as described by the survey; but the plaintiffs having declined the proposal, he refused to partition the lands, and returned unexecuted the decree to the Court. On reference to the High Court:—*Held*, that the Collector had acted *ultra vires*. The plaintiffs were entitled to have the lands partitioned, quite independent of the result of the new survey as regards the character of the lands. The proposal of the Collector was virtually to contravene the command of the Court, which, as a purely ministerial officer, it was not in his power to do either directly or indirectly. GANOJI UTEKAR *v.* DHONDU.

[I. L. R. 14 Bom. 450

2.—*Power of Collector—Reference by Collector—Jurisdiction of District Court—Land Acquisition Act*, s. 55.] A Collector is not competent to refer nor a District Judge to decide any question arising under Land Acquisition Act, s. 55. RAMALAKSHMI *v.* COLLECTOR OF KISTNA.

[I. L. R. 16 Mad. 321

3.—*N.-W. P. Land Revenue Act* (*XIX* of 1873), ss. 3, *Sub-section* (1), 107—*Partition—Wajib-ul-arz—Power of Collector on constituting a new mahal by partition to frame a fresh wajib-ul-arz for such mahal.*] It is within the implied, though not within the specified, powers of a Collector while constituting new *mahals* by partition of a previously existing single *mahal* to frame a new *wajib-ul-arz* for each of the new *mahals* so constituted. KEDAR NATH *v.* RAM DIAL.

[I. L. R. 15 All. 410

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[I. L. R. 13 Mad. 335

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[I. L. R. 15 Mad. 233

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See INSOLVENT ACT, s. 40.

[I. L. R. 14 Mad. 133

——, to Ameen to fix Mesne Profits.

See COURT FEES ACT, s. 20.

[I. L. R. 17 Calc. 281

COMMISSION—CIVIL CASES.

1.—*Commission to examine witnesses—Grounds for granting commission.*] A plaintiff applied, under s. 640 of the Civil Procedure Code (Act XIV of 1882), for a commission to issue for the examination of three female witnesses (*P*, *B* and *A*) at the residence of one of them (*P*). The grounds upon which he based his application were the following:—(1) That *P* had lost her husband ten months previously and was in mourning; that,

COMMISSION—CIVIL CASES—*concluded.*

according to Parsi usage, a widow observed mourning for two or three years, and during that time did not leave her house; (2) that *B* was fifty-eight years of age and sickly and physically unable to attend the Court; (3) that *A* was about to go up-country, and could not stay in Bombay until the hearing:—*Held*, the circumstances alleged were not such as to justify the issue of a commission. RUSTOMJI FRAMJI *v.* BANOOBAI.

[I. L. R. 14 Bom. 584

2.—*Commission to England to take evidence—Costs of such commission—Party and party taxation, principle of—Onus of proof in respect to item objected to—Production of vouchers in case of commission to England—Costs of obtaining transcript of evidence given and of perusing it—Allowances to witnesses—Commissioner's fees—Practice.*] Where, in a suit in India, a commission to take evidence has been issued to England, the bill of costs with respect to such commission is to be taxed by the Taxing Master of the Court in India, and not in England. It is to be taxed on the same scale and on the same principle as would be adopted in England, and, if the Taxing Master finds any difficulty, he must refer to England for information. Where an item is objected to in taxation, the Taxing Master should reconsider and review his taxation, and in doing so he should throw the *onus* of proof, as to the necessity of the item, upon such party as, having regard to its particular nature, he considers ought to bear it. As to the production of vouchers in case of commissions to England, no rule can be laid down. Upon objections being brought in it is in the discretion of the Taxing Master, either on his own motion or on the application of the party objecting, to require vouchers for, or further proof of, all or any of the items objected to, and, failing the production of the vouchers or proof which he may require, to disallow the item. *Quære*—Whether in taxation as between party and party the costs of obtaining a transcript of the evidence given and of perusing it ought to be allowed. Payments made to witnesses are discretionary allowances, and the Court is averse to review such allowances. The Court in appointing a Commissioner to take evidence in England expects that the fees of such Commissioner will not exceed those which the Supreme Court in England would allow to a special examiner or Commissioner acting in England under its orders. If the parties desire that higher fees should be allowed to the Commissioner whom they name, they should obtain an order from the Judge appointing the Commissioner. GOCULDAS BULABDAS MANUFACTURING COMPANY *v.* SCOTT.

[I. L. R. 15 Bom. 209

COMMISSION—CRIMINAL CASES.

Evidence taken on Commission—Criminal Procedure Code, 1882, *ss.* 503—507—*Evidence Act*, 1872, *s.* 33—*Practice.*] Evidence taken under commission issuing from the Court of the Chief Presidency Magistrate during the course of an enquiry before him cannot be used in evidence at the trial before

COMMISSION—CRIMINAL CASES—*concluded.*

the High Court under s. 507 of the Criminal Procedure Code :—*Held*, further, that on the facts before the High Court it was also inadmissible under s. 33 of the Evidence Act. QUEEN-EMPRESS *v.* JACOB.

[I. L. R. 19 Calc. 113

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See PRINCIPAL AND AGENT—COMMISSION AGENTS.

[I. L. R. 16 Mad. 238

[I. L. R. 17 Bom. 520

COMMISSIONER.

——, In Insolvency.

See INSOLVENT ACT, S. 51.

[I. L. R. 13 Mad. 150

——, Reference to.

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[I. L. R. 16 Mad. 350

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[I. L. R. 19 Calc. 584, 742

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[I. L. R. 13 Mad. 510

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See REVISION—CRIMINAL CASES—COMMITMENT.

[I. L. R. 16 Bom. 580

Criminal Procedure Code, ss. 423, 439—*Sessions Judge, powers of, as a Court of appeal.*] It is competent to a Sessions Judge acting as a Court of Appeal under s. 423 of the Code of Criminal Procedure, 1882, having reversed the finding and sentence, to order the appellant to be committed for trial to the Court of Session. *Queen-Empress* v. *Sukha*, I. L. R. 8 All. 14, dissented from. QUEEN-EMPRESS *v.* MAULA BAKSH.

[I. L. R. 15 All. 205

COMPANIES ACT (VI OF 1882.)

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[I. L. R. 20 Calc. 676

COMPANIES ACT (VI OF 1882)—*concld.*

——, s. 252.

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[I. L. R. 20 Calc. 676

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[I. L. R. 21 Calc. 60

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(1) FORMATION AND REGISTRATION.

1.—*Companies Act (VI of* 1882), *s.* 4—*Registration of Association*—"*Gain*"—*Mutual Assurance Society.*] In 1870 a fund was formed by a number of persons over 20 in number, the object being, according to the prospectus and rules, to provide for the widows, children, and other relatives of the subscribers. The management was vested in a Board of Directors elected by the subscribers from amongst their own number. Subscriptions at fixed rates according to tables were paid by the subscribers to secure the provision of pensions for their widows, children, and relatives. The moneys so subscribed were invested in Government 4 per cent. securities, and in the course of management a large reserve fund was accumulated and so invested, the interest annually payable in respect of which amounted in the year 1888 to upwards of Rs 46,000, but there was nothing to show that such reserve was larger than sound principles of management required. The rules provided for abatements of subscriptions according to a graduated scale, which might be granted or withheld from year to year by the Directors according to their opinion as to the condition of the fund. A subscriber to the fund was under no obligation to continue his subscription, but might stop it at pleasure, subject in certain contingencies to forfeiture of the benefit of past payments. Fines were also provided for unpunctuality in payments of subscriptions. It was contended that the subscribers formed an association which required registration under s. 4 of the Indian Companies Act, inasmuch as they carried on business having for its object the acquisition of gain by the association, or the individual members thereof, as the subscribers must be taken to contemplate the ordinary consequences of their acts, and the forfeitures, fines, and large and increasing reserve fund constituted "gain." *Semble* that these did not constitute gain. But *held* that whether they did

COMPANY—*continued.*

(1) FORMATION AND REGISTRATION—*concluded.*

or not, no business was carried on, having for its object the acquisition of gain by the association or the individual members thereof. The subscribers to the General Family Pension Fund are not a company, association, or partnership formed for the purpose of carrying on business that has for its object the acquisition of gain by the company, association, or partnership, or by the individual members thereof, within the meaning of s. 4 of the Indian Companies Act. Where the substantial purpose of an association is not to carry on a business for gain, the fact that gain may accrue incidentally or may arise from merely subsidiary provisions does not make registration necessary. KRAAL *v.* WHYMPER.

[I. L. R. 17 Calc. 786

(2) ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

2.—*Companies Act* (*VI of* 1882), *s.* 45—*Signing duplicate of memorandum before registration of company—Signature after registration of company, effect of—Proposal to take shares—Acceptance.*] When a person signs a duplicate of the Memorandum of Association *after* the registration of the original memorandum he does not thereby become a subscriber within the meaning of s. 45 of the Indian Companies Act VI of 1882. Such signature, however, is equivalent to a proposal to the Company to take shares, and if such a proposal is accepted, the person signing is a person who has agreed with the Company to become a member, within the terms of s. 45, and is liable to calls if entered on the register. BOMBAY NATIONAL MANUFACTURING COMPANY *v.* AHMED BIN ESSA KHALIFFA.

[I. L. R. 14 Bom. 196

3.—*Companies Act* (*VI of* 1882), *s.* 28—*Payment in cash—Accord and satisfaction—Contributory, liability of.*] One *P* served the Nawab of Beyla Spinning and Weaving Company, Limited, as a broker, by getting shares subscribed for, collecting money from subscribers, and inducing people to take shares. There was no express agreement to pay him in cash, but there was a tacit understanding that he should get the usual broker's commission. He was given two shares as remuneration for his services. At the time he accepted the shares, the account of his commission as broker had not been settled, and no demand had been made by him for payment of any specified sum. When the Company was wound up under the orders of the Court, the liquidators placed his name on list A of the contributories for the value of the two shares. He applied to have his name removed from the list: —*Held*, rejecting his application, that his name was rightly put on the list of contributories. The fact that the shares were given him as remuneration for his services could not be pleaded as a payment of the calls on shares, as no definite sum had been found due when the shares were accepted by him. Where the circumstances relied

COMPANY—*continued*

(2) ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—*continued.*

on would, in an action for money due on the shares, be evidence only in support of a plea of accord and satisfaction, it would not be a good defence of "a payment in cash" within the meaning of s. 28 of the Indian Companies Act (VI of 1882), but otherwise, if the circumstances would support a plea of payment. PARSHOTUMDAS *v.* ISHVARDAS.

[I. L. R. 16 Bom. 161

4.—*Suit by liquidator—Limitation—Allotment of shares—Commencement of shareholder's liability—Companies Act* (*VI of* 1882), *s.* 125.] The liquidator of the Gujerat Company in September, 1889, sued the defendant as a registered shareholder of the Company to recover a sum of Rs. 2,483 due from him in respect of his shares. The plaint set forth the particulars of demand, one of which was Rs. 250, being the amount of deposit payable before allotment on 15th July 1886, and another a sum of Rs. 250 payable on allotment on 15th July 1886. This suit was brought on 10th September 1889, and the defendant contended that the above two items of claim were barred by limitation. The lower Courts, notwithstanding the statement in the plaint, found, as a fact, that the allotment of the shares was really made in November 1886:—*Held*, therefore, assuming three years to be the period of limitation, that the claim was not barred. The debt due from the defendant did not become recoverable until he was registered as a shareholder. MALICHAND DHARAMCHAND *v.* DALSUKHRAM HARGOVINDAS.

[I. L. R. 17 Bom. 469

5.—*Suit by liquidator against shareholder—Limitation—Commencement of liability of shareholder in respect of shares—Memorandum of Association—Attestation of signature of subscriber—Companies Act* (*VI of* 1882), *s.* 11.] A suit against a shareholder to enforce liability in respect of his shares, if brought within three years from the date at which his name is inscribed in the register as the holder of such shares, is not barred by limitation. Where a Memorandum of Association of a Company has been registered, a subscriber cannot divest himself of his liability as a member of the Company, although his signature to the memorandum may not have been properly attested. The transaction may be irregular, but it is not void. CHHOTALAL CHHAGANLAL *v.* DALSUKHRAM HARGOVINDAS.

[I. L. R. 17 Bom. 472

6.—*Companies Act* (*VI of* 1882), *s.* 28—*Shares issued as fully paid up—Rights of a purchaser with notice taking from a purchaser without notice—Contributory.*] Twenty shares of the Beyla Spinning, Weaving and Manufacturing Company, Limited, were originally allotted to *A* as fully paid-up shares partly for work done and partly for work to be done for the Company. The agreement under which the shares were so allotted was not registered as required by s. 28 of Act VI

COMPANY—*continued.*

(2) ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS—*concluded.*

of 1882. *A* sold three of these shares to *D*, who had no notice that they were not fully paid up. *D* sold the three shares to *G*, who was the Managing Director of the Company. The Company was wound up by the Court. At the date of the winding up, *G* was holder of the three shares. In settling the list of contributories, the Court ordered *G's* name to be placed on the list in respect of the three shares:—*Held*, that *G* was not liable as a contributory. Though *G* was a Managing Director of the Company, and as such must have known that the shares had been issued as fully paid-up shares without complying with s. 28 of Act VI of 1882, he was not on that account estopped from taking advantage of the equitable rule which protects a purchaser with notice taking from a purchaser without notice. IN RE GULABDAS BHAIDAS.

[I. L. R. 17 Bom. 672

(3) TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

7.—*Suit to compel Directors to register transfer—Persons entitled to require registration of transfer—Insolvency of shareholder—Official Assignee, right of, to sell shares and obtain transfer.*] One of the Articles of Association of the Coorla Spinning and Weaving Company provided that the Board of Directors might decline to register any transfer of shares, unless the transferee were approved by the Board. A shareholder, holding 423 shares, became insolvent, and his shares thereupon vested in the Official Assignee, who sold them. The purchaser required the Official Assignee to transfer the shares into the names of two nominees, *viz.*, 200 shares to the name of one nominee, and 223 shares to the name of the other. The Official Assignee executed the necessary transfer deeds and sent them to the Company, with a request that the shares might be transferred accordingly. The proposed nominees were already members of the Company and registered holders of shares in it, and no objection was taken to them in their personal capacity. The Directors, however, declined to approve of the transferees and to register the transfer, unless the transferees would pledge themselves not to approve a certain change in the mode of remunerating the Agents of the Company, which the Directors desired to effect, and which they believed would be very advantageous to the Company. The transferees refused to pledge themselves in any way as to their future action and brought this suit to enforce registration of the transfer:—*Held*, following *Moffatt* v. *Farquhar*, L. R. 7 Ch. D. 591, that the Directors were bound to register the transfers. It was contended that neither the Official Assignee nor the transferees had any legal right to call on the Company to register the transfers. *Held*, that, having regard to the provision of the Articles of Association of the Company, the Official Assignee was entitled to have the shares registered in the

COMPANY—*continued.*

(3) TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES—*concluded.*

names of his vendees. KAIKHOSRO MUNCHERJI HEERAMANECK *v.* COORLA SPINNING AND WEAVING COMPANY.

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8.—*Sanction to transfer not obtained from Directors—Application for registration by transferee—Refusal of Directors to register—Specific Relief Act I of* 1877, *s.* 45—*Companies Act (VI of* 1882, *s.* 58.] *G* bought some shares in the Bombay Fire Insurance Company and applied to the Directors for registration as a shareholder in respect of the shares bought. The Directors refused the application, giving no reason for so doing. *G* now applied to the Court, under s. 45 of the Specific Relief Act and under s. 58 of the Indian Companies Act, for an order compelling the Directors to register him as a shareholder. The Articles of Association of the Company provided (*inter alia*) that any shareholder might, with the sanction of the Board of Directors, sell or dispose of and transfer all or any of his shares to any other person approved by the Board (who shall not be bound to assign any reason for the withholding of such sanction):—*Held*, that the application should be refused, for s. 45 of the Specific Relief Act did not apply (there being another "specific and adequate legal remedy"), and under the Companies Act the proper procedure had not been adopted. *G* was a transferee whose title was not complete, inasmuch as the requisite sanction to the transfer had not been obtained, and, therefore, there was no privity between him and the Directors of the Company, and he had no right to complain. IN THE MATTER OF BOMBAY FIRE INSURANCE COMPANY. EX-PARTE GILBERT.

[I. L. R. 16 Bom. 398

(4) MEETINGS AND VOTING.

9.—*Meeting of shareholders—Power of Chairman—Poll—Time for taking a poll—Right of shareholder to vote at meeting—Articles of Association.*] At common law, and where the taking of a poll is not governed by statute or special rule, the Chairman of a meeting is the proper authority to fix the time and place for the taking of a poll; and a poll is properly and correctly taken immediately after the termination of the meeting. The same rule applies to meetings of registered companies, unless their articles prescribe some other procedure. The object of a poll in the case of a meeting of members of a registered company, as of other meetings, is to ascertain the true sense of the meeting, and is not to give absent members a further opportunity of voting, unless a contrary intention is expressly or impliedly to be gathered from the articles of the company. There is no presumption in construing a doubtful article in the latter sense. One of the articles of association of a joint stock company provided as follows:—"Every shareholder not disqualified by the preceding article or article No. 17, and who has been duly registered for three

COMPANY—*continued.*

(4) MEETINGS AND VOTING—*concluded.*

months previous to the general meeting, shall be entitled to vote at such meeting, and shall have one vote in respect of every share held by him:—*Held*, that the meaning of the above article was merely that a shareholder should be registered for three months before he could vote, but that having thus once acquired the right to vote he had one vote in respect of every share held by him. It was not necessary under the article that every such share should have been held by him for three months. LILADHAR SHAMJI *v.* REHMUBHOY ALLANA.

[I. L. R. 15 Bom. 164

(5) WINDING UP.

(*a*) GENERAL CASES.

10.—*Companies Act* (*VI of* 1882), *s.* 177—*Voluntary liquidation—Liability to be sued—Execution of decree.*] Where a Company has gone into a voluntary liquidation it can still be sued for debts due by it incurred prior to liquidation, although the fact that there are liquidators may be material if execution of the decree is sought. KOTHANDAPANI *v.* SOMASUNDARAM.

[I. L. R. 15 Mad. 97

11.—*Companies Act* (*VI of* 1882), *s.* 136—*Proceeding with suit—Proceeding to enforce execution of decree—Sanction of the Court—Suit or other proceeding.*] The language of s. 136 of the Companies Act (VI of 1882), shows that proceedings in execution are regarded as distinct from the suit for the purpose of that section: therefore the leave given to proceed with a suit is not authority for proceedings taken in execution of the decree in the suit authorised. ISHVARDAS JAGJIVANDAS *v.* DHANJISHA NASARVANJI.

[I. L. R. 16 Bom. 644

(*b*) DUTIES AND POWERS OF LIQUIDATORS.

12.—*Voluntary liquidation—Liquidator, borrowing powers of—Assets—Principal and Agent—Election—Subrogation—Companies Act* (*VI of* 1882), *ss.* 144 (*f*), 177 (*g*).] Case in which it was held that a Liquidator of a Company being voluntarily wound up, had power to borrow for the purposes of winding up, including the working of steamers and docks, on the credit of the assets of the Company without security written or otherwise, and that the loan in question was within his powers and was in fact made to the Company, though the liquidator also made himself personally liable. *Per* PETHERAM, C. J.:—*Held*, that a person contracting with an agent may look directly to the principal unless by the terms of the contract he has agreed not to do so, whether he was or was not aware when he made the contract that the person with whom he was dealing was an agent only. *Calder* v. *Dobell*, L. R. 6 C. P. 486, referred to. *Per* WILSON and PIGOT, JJ.—*Held*, that the realized assets of a Company divided among the shareholders in pursuance of a resolution are assets within the meaning of

COMPANY—*concluded.*

(5) WINDING UP—*concluded.*

(*b*) DUTIES AND POWERS OF LIQUIDATORS—*concluded.*

s. 144 (*f*) of the Indian Companies Act. *Per* PIGOT, J.—*Held*, that if it were necessary to hold so, the principle of *Baroness Wenlock* v. *River Dee Company*, L. R. 19 Q. B. D. 155, would apply to the case. IN THE MATTER OF THE INDIAN COMPANIES ACT, 1882. IN THE MATTER OF THE GANGES STEAM TUG COMPANY. EX-PARTE THE DELHI AND LONDON BANK.

[I. L. R. 18 Calc. 31

13.—*Application by Official Liquidator for sanction to sale of Company's property—Lease—Covenant against assignment—Covenant not applying to assignments other than by act of parties—Companies Act* (*VI of* 1882), *s.* 144—*Act IV of* 1882 (*Transfer of Property Act*), *ss.* 10, 12.] The power of the Court under s. 144 (*c*) of the Indian Companies Act (VI of 1882) to give sanction to an Official Liquidator to sell the property of the Company, overrides a private contract against assignment made by the Company. A covenant in a lease to a Company provided that the lessees should not "assign, underlet or part with the possession of any part of the said premises unless with the express consent in writing of the said lessors or their assigns." The Company having gone into liquidation, and the Official Liquidator having applied, under s. 144 (*c*) of the Indian Companies Act, for sanction to sell the Company's property, it was objected on behalf of the lessors' assigns that the proposed sale would be in contravention of the covenant:—*Held*, that the covenant did not apply to assignments by operation of law or assignments authorized by statute. Ss. 10 and 12 of the Transfer of Property Act (IV of 1882) relate only to transfers by act of parties. IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY.

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COMPENSATION. *Col.*

1. Compensation to Accused on Dismissal of Complaint 205

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[I. L. R. 17 Bom. 771

——, Apportionment of.

See APPEAL—ACTS—LAND ACQUISITION ACT.

[I. L. R. 16 Bom. 525

See LAND ACQUISITION ACT, s. 39.

[I. L. R. 17 Calc. 144

——, by Municipality.

See BOMBAY MUNICIPAL ACTS, s. 163.

[I. L. R. 14 Bom. 292

COMPENSATION—*continued.*

——, Determination of amount of.

See LAND ACQUISITION ACT, s. 11.

[I. L. R. 14 Mad. 46

See LAND ACQUISITION ACT, s. 22.

[I. L. R. 17 Calc. 380, 383

See LAND ACQUISITION ACT, ss. 24, 25.

[I. L. R. 15 Bom. 279

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——, for arrest.

See WITHDRAWAL OF SUIT.

[I. L. R. 15 Bom. 160

——, for breach of contract.

See LIMITATION ACT, 1877, ART. 116.

[I L. R. 19 Calc. 19

——, for improvements.

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[I. L. R. 13 Mad. 454, 502

[I. L R. 17 Bom. 736

——, for wrongful acts.

See MADRAS LOCAL BOARDS ACT, s. 27.

[I. L. R. 16 Mad. 296

——, Land given as.

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[I. L. R. 13 Mad. 485

(1) COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

1.—*Criminal Procedure Code, s. 560—Compensation for frivolous or vexatious complaint—Complaint under s. 110 of Criminal Procedure Code.*] The award of compensation under s. 560 of the Code of Criminal Procedure must be in respect of a frivolous and vexatious accusation of an offence of which the accused person has been discharged or acquitted. That section is not applicable to an application made to a Magistrate solely with a view to his taking proceedings under s. 110 of the Code. QUEEN-EMPRESS *v.* LAKHPAT.

[I. L. R. 15 All. 365

2. *Complainant—Complaint—Criminal Procedure Code (Act X of 1882), ss. 250, 560—Criminal Procedure Code Amendment Act (IV of 1891), s. 2—Penal Code (Act XLV of 1860), s. 186.*] Where a Civil Court peon was sent by a Munsif to attach certain property, and on the peon reporting that he had been obstructed in making the attachment, the Munsif sent the case to the Deputy Magistrate for investigation and trial, and the Deputy Magistrate summarily tried the accused under s. 186 of the Penal Code, dismissed the case, and awarded compensation of Rs. 20 to the accused:—*Held*, that the award of compensation

COMPENSATION—*concluded.*

(1) COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT—*concluded.*

was illegal: the peon, though nominally the informant in the case, was not the real complainant, nor could the proceedings properly be said to have been instituted before the Deputy Magistrate on his information. BHARUT CHUNDER NATH *v.* JABED ALI BISWAS.

[I. L. R. 20 Calc. 481

COMPETENT COURT.

See CASES UNDER RES JUDICATA—COMPETENT COURT.

COMPLAINANT.

See COMPENSATION—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

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COMPLAINT— *Col.*

1. Institution of Complaint and necessary Preliminaries 206

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See CRIMINAL PROCEDURE CODE, s. 437.

[I. L. R. 20 Calc. 729

——, Dismissal of.

See COMPENSATION—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[I. L. R. 15 All. 365

——, Institution of.

See COMPENSATION—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[I. L. R. 20 Calc. 481

(1) INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

—*Criminal Procedure Code, s. 198—Defamation of a wife—Complaint by husband.*] When a married woman is defamed by the imputation of unchastity, her husband is a person aggrieved, upon whose complaint the Magistrate may take cognizance of a complaint under Criminal Procedure Code, s. 198. CHELLAM NAIDU *v.* RAMASAMI.

[I. L. R. 14 Mad. 379

COMPOSITION-DEED.

See DEBTOR AND CREDITOR.

[I. L. R. 16 Mad. 85

COMPOUNDING OFFENCE.

1.—*Penal Code, s. 214—Screening an offender.*] The accused agreed to give Rs. 10 to *S* in consideration of his not giving evidence against *K*, who was charged with the offences of house-breaking by night and theft in a building. *S* gave evidence

against *K*, who was, however, acquitted. The accused was charged under Penal Code, s. 214, but was acquitted:—*Held*, that the acquittal was right. S. 214 of the Penal Code presupposes the actual commission of an offence, or the guilt of the person screened from punishment. QUEEN-EMPRESS *v.* SAMINATHA.

[I. L. R. 14 Mad. 400

2.—*Requisites for composition of offence valid in law—Criminal Procedure Code (Act X of 1882), s. 345—Onus of proof—Wrongful restraint and confinement of coolies employed on tea garden.*] Where an accused person alleges that an offence with which he is charged has been compounded so as to take away the jurisdiction of the Criminal Courts to try it, the *onus* is on him to show that there was a composition valid in law. *M*, a European British subject, charged with the compoundable offences of wrongful restraint and wrongful confinement of coolies employed on a tea garden of which he was the manager, pleaded that the Magistrate had no jurisdiction to try the cases, as they had been compounded by the complainants. The alleged compromise consisted of a Bengali paper, signed by the coolies, stating that they "made *razinama*" (compromise) "of the case of their own accord," and a paper in English signed by *M*, these papers being given to the District Superintendent of Police, who had investigated the complaints, and who stated that he asked the coolies as to the contents of the Bengali paper, and they said that they had signed it voluntarily and stated its purport, and that one of them said in the presence of the others that it was a *razinama*. *G*, one of the coolies, also wrote on the paper the words in Uriya, "I will not carry on the case." The Bengali paper was written by the *darogah* of the police-station in presence of *M*. The paper signed by *M* was as follows:—"I hereby agree with these Ganjam people that there shall be no legal proceedings of any kind taken against them with the exception of those who have not completed their agreements. Those whose agreements have not been completed, proceedings will be taken against them on 22nd May, if they have not returned to the garden before then." Neither of the papers were explained to *G* so as to make them intelligible to him, for though the Bengali paper was read out, *G* did not understand that language. *G* was one of the coolies who had completed his agreement with *M*. *Held per* PRINSEP, J.: The compounding of an offence signifies that the person against whom the offence has been committed has received some gratification to act as an inducement for his desiring to abstain from a prosecution; here there was no forbearance on the part of *M* to proceed against *G*, who had served out the term of his engagement, and, therefore, there was no consideration for the agreement to compound. Having regard, moreover, to the ignorance and inferior intelligence of *G*, it was of vital importance for *M* to show what led to the alleged agreement, and how it was that the *darogah* was instrumental to it, which he had not done. *Per* TREVELYAN, J.:

—Compounding an offence supposes an arrangement by which the parties have settled their differences, and in the more usual acceptation of the term implies that the prosecutor has received some consideration or gratification for dropping the prosecution. Although the provisions of the Contract Act may not apply, the proof of the arrangement must be similar to that which the Court requires for the proof of any agreement which is in issue; and unless it appears that the parties were free from influence of every kind and were fully aware of their respective rights, it would be impossible to give effect to a so-called arrangement or composition. Having regard to the fact that the writer of the Bengali agreement had not been called, and that the contracting parties were, on the one side, ignorant coolies, strangers to the land and to the language in which the document was written, and on the other, a European of some education, assisted by his Bengali clerk, and having also the assistance of the Police, it was not proved that *G* knew what he was about and was fairly contracting. *Held*, therefore, by the Court that there was under the circumstances no compounding of the offences with which *M* was charged, valid in law such as to deprive the Magistrate of jurisdiction to try them. MURRAY *v.* QUEEN-EMPRESS.

[I. L. R. 21 Calc. 103

COMPROMISE.

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1. Compromise of Suits under Civil Procedure Code 208

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—— of claim.

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—— of suit.

See COUNSEL.

[I. L. R. 13 All. 272

See LIS PENDENS.

[I. L. R. 18 Calc. 188

(1) COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

1.—*Compromise of suit by Guardian—Withdrawal by guardian of objection to Executor's accounts—Decree against minor—Mode of setting aside decrees—Review—Civil Procedure Code, 1882, ss. 11, 462, 623—Application to set decree aside—Practice—Procedure.*] An administration suit filed in 1870 against executors on behalf of three

COMPROMISE—*continued.*

(1) COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*continued.*

infant plaintiffs was referred to the Commissioner to take accounts of the administration of the estate by the defendants. In August, 1876, and before the taking of accounts was concluded the plaintiff's guardian withdrew certain surcharges and objections which had been filed to the defendants' accounts and compromised the suit. The Commissioner then made his report, which, with the consent of all parties to the suit, was confirmed by the Court on the 13th January 1885. One of the plaintiffs attained his majority in December, 1887, and, on the 15th March, 1888, obtained a rule calling on the defendants to show cause why the proceedings in the Commissioner's office subsequent to August 1876 should not be set aside, and why he should not be at liberty to proceed with the accounts filed in the Commissioner's office. He alleged that the enquiry before the Commissioner had not been conducted in the interest of himself and the other infant plaintiffs; that their guardian had been induced to withdraw objections and surcharges by the threats and coercion of the defendants, and that the compromise had not been sanctioned by the Court. He contended that the proceedings before the Commissioner had been a sham:—*Held*, that the rule should be discharged. The decree was regular in itself and on the face of it correct, and it could only be set aside by a regular suit. *Per* FARRAN, J.:—The only modes of setting aside a decree prescribed by the Code of Civil Procedure (XIV of 1882) are by review under s. 623 and by suit under s. 11. MIRALI RAHIMBHOY *v.* REHMOOBHOY HABIBBHOY.

[I. L. R. 15 Bom. 594

Affirming on appeal, KARMALI RAHIMBHOY *v.* RAHIMBHOY HABBIBHOY.

[I. L. R. 13 Bom. 1 37

2.—*Civil Procedure Code*, 1882, *s.* 375—*Agreement adjusting a suit—Subsequent disagreement of the parties—Application by one of the parties to record the agreement.*] Under s. 375 of the Civil Procedure Code (XIV of 1882) an application to record an agreement adjusting a suit may be made, although, at the time of such application, one of the parties either denies that it was made, or wishes to withdraw from it, or otherwise objects to its enforcement. The Court, being already seized of the suit which is adjusted, the application to record the alleged agreement is a proceeding in that suit, and the Court, in connection with that proceeding, necessarily has all the powers and has thrown upon it all the duties which appertain to it in regard to any other questions arising in any suit upon its file.—*Ruttonsey Lalji* v. *Pooribai*, I. L. R. 7 Bom. 304, approved and followed; *Hara Sundari Debi* v. *Dukhinessur Malia*, I. L. R. 11 Calc. 250, dissented from GOCULDAS BULABDAS MANUFACTURING COMPANY *v.* SCOTT.

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COMPROMISE—*concluded.*

(1) COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE—*concluded.*

3.—*Civil Procedure Code*, *s.* 375—*Agreement to be bound by oath of particular person — Oaths Act*, *s.* 11.] The question in a suit was whether the purchase money for a house, which had been paid by the defendant, had been paid out of his own funds or out of monies belonging to the plaintiff. A witness for the defence having made statements apparently favourable to the plaintiff's case, the pleaders for both parties signed and presented to the Court a petition that if upon a particular bond in the witness' possession it should be stated that the money was received through the defendant, the Court should decree the suit, otherwise the suit should be dismissed:—*Held* that this arrangement was not an adjustment or compromise of the suit within the meaning of s. 375 of the Civil Procedure Code, so as to determine the jurisdiction of the Court and necessitate its passing a decree according to the arrangement. MUHAMMAD ZAHUR *v.* CHEDA LAL.

[I. L. R. 14 All. 141

4.—*Civil Procedure Code*, *s.* 577—*Unverified sulahnamah—Consent decree—Appellate Court, Power of.*] Where an application purporting to contain the terms of a compromise was presented to the High Court by one of the parties to an appeal before it, but on the so-called *sulahnamah* being sent down to the lower Court for verification, it was found that the attendance of the parties for that purpose could not be procured:—*Held*, that the High Court was not justified in passing a decree under s. 577 of the Code of Civil Procedure in accordance with the terms of the unverified *sulahnamah*. BANDHU BHAGAT *v.* MUHAMMED TAQUI.

[I. L. R. 14 All. 350

COMPULSION AS AN EXCUSE FOR CRIME.

See ACCOMPLICE.

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CONCURRENT JUDGMENTS ON FACT.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

[I. L. R. 21 Calc. 523

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[I. L. R. 13 All. 165

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CONDITION PRECEDENT—*concluded.*

See CONTRACT—CONDITIONS PRECEDENT.

[I. L. R. 14 Bom. 498

See EXECUTION OF DECREE—NOTICE OF EXECUTION.

[I. L. R. 20 Calc. 370

[I. L. R. 21 Calc. 19

CONDITION RESTRAINING ALIENATION.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

[I. L. R. 17 Calc. 826

See LEASE—CONSTRUCTION.

[I. L. R. 17 Calc. 826

CONDITIONS OF SALE.

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

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2.	Confessions to Police-officers ...	213
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See PLEA.

[I. L. R. 14 Bom. 564

(1) CONFESSIONS TO MAGISTRATE.

1.—*Criminal Procedure Code* (*Act X of* 1882), *ss.* 164, 364, *and* 533—*Evidence Act* (*I of* 1872), *s.* 91—*Examination of accused—Defect in confession—Confession not recorded in language in which it is given, admissibility of in evidence.*] An accused, when in custody, made a confession to a Deputy Magistrate in the presence of a Sub-Inspector, and during an investigation being held into a case of murder, under the provisions of Chapter XIV of the Criminal Procedure Code. The confession was recorded by the Deputy Magistrate in English, though made in Hindi, which the Deputy Magistrate perfectly well understood and could write. It purported to have been recorded under the provisions of *s.* 164, and was in reply to one question which was set out. The record bore the signatures of the accused and of the Deputy Magistrate, as well as the certificate as required by the section. It occupied about five pages of foolscap. At the trial the Sessions Judge excluded this confession on the ground that not having been recorded in the language in which it was made, and there being no reason why it should not have been so recorded, the document was inadmissible in evidence. He, however, called the Deputy Magistrate as a witness, and admitted in evidence his statement as to what the accused told him. This evidence, which occupied only a few lines, was to the effect that the accused told him he had committed the murder, and on this evidence alone the accused was convicted. On appeal, *held* that the provisions of *s.* 164 read with *s.* 364 are imperative as to the language in which a confession is to be recorded, and that *s.* 533 does not contemplate or provide for any *non*-compliance with the

CONFESSION—*continued.*

(1) CONFESSIONS TO MAGISTRATE—*contd.*

law in this respect, and that, therefore, as it was not impracticable to record the confession in Hindi, the Sessions Judge was right in refusing to admit the document in evidence:—*Held* further, that the Sessions Judge erred in admitting the oral evidence of the Deputy Magistrate as to what the accused told him, as, seeing that he was acting under the provisions of *s.* 164 of the Criminal Procedure Code, the confession was matter which was required by law to be reduced to the form of a document, and therefore under *s.* 91 of the Evidence Act no evidence could be given in proof of such matter except the document, where, as in this case, it was in existence and forthcoming. *Held* also, that as the defects in the record could not be cured under *s.* 533 of the Criminal Procedure Code, and no secondary evidence could be given, no proof of the confession could be given, and the accused must be acquitted. JAI NARAYAN RAI *v.* QUEEN-EMPRESS.

[I. L. R. 17 Calc. 862

2.—*Criminal Procedure Code* (*Act X of* 1882), *ss.* 164, 364, *and* 533—*Examination of accused—Confession not recorded in language in which it was made—admissibility of in evidence.*] Where a confession made in Hindustani was taken before a Sub-divisional Magistrate and was recorded by the Court Officer in Bengali, that being the language of the Court, and where it appeared that the Magistrate himself was a Mahomedan, and it was contended that he must be taken to have been able to record the confession in the language in which it was given, there being no evidence to the contrary:—*Held*, in the absence of such evidence, the Court should presume that the proceedings of the Magistrate were conducted in accordance with law, and that in the absence of anything to show that it was practicable for the officers of his Court to record the statement in Urdu, it could fairly be held that the Magistrate found that was impracticable, and adopted the alternative allowed by law of having the confession recorded in the Court language. *Jai Narayan Rai* v. *Queen-Empress*, I. L. R. 17 Calc. 862, doubted. LALCHAND *v.* QUEEN-EMPRESS.

[I. L. R. 18 Calc. 549

3.—*Evidence Act*, *ss.* 74, 80—*Presumptions in respect of record of foreign Court—Confession made before, and attested by, a judicial officer in a Native State, how far admissible as evidence in the Courts of British India.*] Certain persons charged with a dacoity committed at Chawripura, a village on the borders of Gwalior, having gone over into Gwalior territory, were arrested and brought before the Magistrate of Bhind in Gwalior. That officer recorded their statements, attesting each statement in the following words:—"I believe that this confession was made without threat or coercion, and it was made in my presence and to my hearing. The person making it, having heard it read out to him, stated it as correct. It contains a full and true account of the statement made by him." Each statement also bore the mark (by way of signature) of the person by

CONFESSION—*continued.*

(1) CONFESSIONS TO MAGISTRATE—*concld.*

whom it purported to have been made. Subsequently these persons were handed over to the British authorities and were tried by the Court of Session, who rejected the confessions above referred to as inadmissible in evidence. The accused having appealed to the High Court, it was held that each of the confessions recorded in the manner above described was admissible in evidence, certainly under s. 80 of the Evidence Act, and probably under s. 74 of that Act, as against the person by whom it was made. QUEEN-EMPRESS *v.* SUNDAR SINGH.

[I. L. R. 12 All. 595

(2) CONFESSIONS TO POLICE-OFFICERS.

4.—*Evidence Act, ss.* 8, 25, 26, 27—*Statements made by accused while in Police custody, admissibility of—Confession—Confession leading to discovery of a fact—Statements as evidence of conduct.*] The accused was charged, under s. 411 of the Penal Code, with dishonestly receiving stolen property. In the course of the Police investigation the accused was asked by the Police where the property was. He replied that he had kept it, and would show it. He said he had buried the property in the fields. He then took the Police to the spot where the property was concealed, and with his own hands disinterred the earthen pot in which the property was kept. He made a second statement when pointing out the spot to the effect that he had buried the property there. It was contended that those statements were inadmissible, having been made when the accused was in custody of the Police:—*Held*, (1) That the above statements were clearly in the nature of a confession, as they suggested the inference that the prisoner committed the crime, and even if not intended by the accused as a confession of guilt they were an admission of a criminating circumstance and would form a very important part of the evidence against the accused, as showing that he had not come by the property honestly, and were, therefore, properly within the rule of exclusion in regard to confessions made by a person in custody of the Police. (2) That neither of the above statements was admissible in evidence under Explanation 1 of s. 8 of the Evidence Act I of 1872, as evidence of the conduct of the accused. Section 8 so far as it admits a statement as included in the word "conduct" must be read in connection with ss. 25 and 26, and cannot admit a statement as evidence which would be shut out by those sections. (3) That the accused's statement, that he had buried the property in the fields, was admissible in evidence under s. 27 of the Evidence Act, as it set the Police in motion and led to the discovery of the property. A statement is equally admissible under s. 27, whether the statement is made in such detail as to enable the Police to discover the property themselves, or whether it be of such a nature as to require the assistance of the accused in discovering the exact spot where the property is concealed. QUEEN-EMPRESS *v.* NANA.

[I. L. R. 14 Bom. 260

CONFESSION—*concluded.*

(2) CONFESSIONS TO POLICE-OFFICERS—*concluded.*

5.—*Evidence Act, ss.* 25 *and* 26—*Confession made to a Police-patel, admissibility of—Police-officer.*] A Police-patel is a Police-officer within the meaning of ss. 25 and 26 of the Evidence Act (I of 1872). A confession made to a Police-patel is inadmissible in evidence. QUEEN-EMPRESS *v.* BHIMA.

[I. L. R. 17 Bom. 485

(3) CONFESSIONS OF PRISONERS TRIED JOINTLY.

6.—*Evidence Act, s.* 30—*Confessions of fellow-prisoners tried jointly for the same offence.*] When the accused was convicted solely on the confessions of his fellow-prisoners, who were tried jointly with him for the same offence:—*Held*, that the conviction was bad. Under s. 30 of the Indian Evidence Act (I of 1872) such confessions could be "taken into consideration" against the accused, but they were *not* evidence within the definition given in s. 3 of the Act; and they could not, therefore, alone form the basis of a conviction. QUEEN-EMPRESS *v.* KHANDIA BIN PANDU.

[I. L. R. 15 Bom. 66

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See APPEAL TO PRIVY COUNCIL.—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[I. L. R. 18 Calc. 378

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[I. L. R. 13 Mad. 211

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See CONTRACT—CONSTRUCTION OF CONTRACTS.

[I L. R. 17 Bom. 457

See CONTRACT ACT, s. 25.

[I. L. R. 14 Bom. 390

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[I. L. R. 17 Bom. 232

See STAMP ACT, 1879, s. 24.

[I. L. R. 15 Bom. 675

——, Failure of.

See LIMITATION ACT, 1877, ART. 97.

[I. L. R. 19 Calc. 123

——, Suit for return of.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.

[I. L. R. 16 Bom. 673

——, Unlawful.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY.

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[I. L. R. 15 Mad. 131

(1) PENAL CODE, s. 174.

1.—*Disobedience to a summons—Summons to appear at place outside British territory.*] It is not an offence under the Penal Code, s. 174, to disobey a summons issued by a British Magistrate directing the person summoned to appear before him at a place outside British territory. QUEEN-EMPRESS *v.* PARANGA.

[I. L. R. 16 Mad. 463

(2) PENAL CODE, s. 175.

2.—*Omission to produce document when ordered by Court—Criminal Procedure Code*, 1882, *ss.* 477, 480, 485 *and* 487—*Jurisdiction of Magistrate in respect of offence committed before him—Witness not producing document.—Disobedience of lawful authority of public servant.*] The accused was summoned as a witness to produce certain documents in a case before a Magistrate, but he failed to produce them saying that they were not in his possession. The Magistrate having found that the statement was incorrect and that the accused could have produced the documents in question, charged him with having committed an offence under s. 175 of the Penal Code and himself tried and convicted him:—*Held* that neither ss. 477, 480, nor s. 485 (which sections provide for the only cases in which a Court "other than a High Court, &c," can try persons for offences committed before itself) was applicable to the case, and the Magistrate was therefore precluded by s. 487 from trying the case. QUEEN-EMPRESS *v.* SESHAYYA.

[I. L. R. 13 Mad. 24

It does not appear from the statement of the case whether or not the offence was committed "in view or presence of the Court" *and* taken "cognizance of the same day." From the judgment it would appear that it was *not*, and this must form the ground for the decision; for offences under s. 175, Penal Code, are expressly mentioned in s. 480 of the Criminal Procedure Code, and if committed "in view or presence of the Court," and taken "cognizance of the same day," the Magistrate would apparently have had clear power to try the offence and convict the accused as he did.

See IN RE PREMCHAND DOWLATRAM.

[I. L. R. 12 Bom. 63

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See MINOR—LIABILITY ON CONTRACTS.

[I. L. R. 18 Calc. 259

See MINOR—RIGHT TO ENFORCE CONTRACTS.

[I. L. R. 20 Calc. 508

See RIGHT OF SUIT—CONTRACTS OR AGREEMENTS.

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——, Assignment of—

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[I. L. R. 15 Bom. 1
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—— becoming unlawful.

See CONTRACT ACT, s. 56.

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[I. L. R. 14 Mad. 18

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[I. L. R. 14 Bom. 200

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[I. L. R. 13 All. 330

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[I. L. R. 19 Calc. 372

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——, Divisibility of—

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—— for personal service.

See STAMP ACT, 1879, s. 3.

[I. L. R. 14 Mad. 18

——, Implied contract.

See MADRAS RENT RECOVERY ACT, s. 11.

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[I. L. R. 14 Bom. 286

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[I. L. R. 14 Bom. 241

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[I. L. R. 16 Bom. 441

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[I. L. R. 17 Calc. 432

——, Rectification of—

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[I. L. R. 16 Bom. 561

CONTRACT—*continued.*

——, Rescission of—

See CHARTER-PARTY.

[I. L. R. 16 Bom. 561

See VENDOR AND PURCHASER—TITLE.

[I. L. R. 15 Bom. 657

(1) CONSTRUCTION OF CONTRACTS.

1.—*Personal contract—Assignment—Suit by assignee.*] When considerations connected with the person with whom a contract is made form a material element of the contract, it may well be that such a contract on that ground alone is one which cannot be assigned without the promisor's consent so as to entitle the assignee to sue him on it. *Stevens* v. *Benning*, 1 K. & J., 168, referred to. By an agreement in writing, dated 13th December 1882, and executed in favour of *M D* and *H D*, who were the proprietors of an Indigo concern, the defendant *R* agreed to sow indigo, taking the seed and *tandi* from *M D* and *H D's* concern, on four *bighas* of land out of his holding selected, measured, and prepared by *M D* and *H D* or their Amlah; and when the indigo was fit for weeding "to weed, reweed and turn it up to the extent necessary according to the directions of the Amlah of the concern;" and when the indigo was fit for reaping to "reap and load it on carts according to the directions of the Amlah of the concern;" and "if any portion of the said indigo land" was "in the judgment of the Amlah of the concern found bad," in lieu thereof to get some other land in his holding measured, and "on the land so measured in Bysack" to "sow Bhadbon crops only which will be reaped in Bhadur." The defendant also agreed not to sow on the land measured any crop that might "cause obstacle to the cultivation of indigo," and, if he did so, "the Amlah of the concern" should "be at liberty to destroy such crop," and he should not "oppose the destruction thereof nor sue in the Courts Civil or Criminal for destruction of the same." As regards a breach of any condition it was provided: "If I or my heirs depart from the conditions of this indigo engagement directly or indirectly or in any way neglect to cultivate or do not cultivate indigo I or they shall pay to the above-named *M D* and *H D* damages for the same from my or their person and property and shall raise no plea or objection." In 1886, *M D* and *H D* assigned the entire benefit of this agreement to the plaintiff. In a suit by the plaintiff against the defendant for damages on account of his alleged failure to cultivate indigo for the plaintiff's concern in accordance with the terms of the agreement of the 13th December 1882:—*Held*, that the agreement must be construed as one which had been entered into by the defendant with reference to the personal position, circumstances and qualifications of *M D* and *H D* and their Amlah; and that therefore it was not assignable so as to give the assignee a right to sue upon it in his own name as for a breach of contract. TOOMEY *v.* RAMA SAHI.

[I. L. R. 17 Calc. 115

CONTRACT—*continued.*

(1) CONSTRUCTION OF CONTRACTS—*contd.*

2.—*Sale of Goods—Delivery—Delivery on Sunday—Custom as to delivery.*] Where the defendant, a European, was sued for damages for non-delivery of goods and contended that he was not bound to deliver on Sunday:—*Held*, that delivery on Sunday was not unlawful, and that, in the absence of custom to the contrary, the defendant was bound to deliver the goods on that day if they had not already been delivered. LALCHAND BALKISSAN *v.* KERSTEN.

[I. L. R. 15 Bom. 338

3.—*Contract for freight—June shipment—Naming probable date of arrival of steamer—Later arrival no breach of contract—Estoppel—Notice of readiness to load.*] The defendant in April, 1891, contracted with the plaintiffs for freight for 375 tons seeds, wheat, &c., "by any first class steamer, &c. (subject to safe arrival), June shipment. Goods to be alongside in time to be all taken in on or before the second day after notice that steamer is ready for cargo; otherwise difference of freight at market rate to be payable on demand as liquidated damages," &c. On the 29th May defendant wrote saying he would be glad to know the name and probable date of arrival of the steamer. On the 3rd June the plaintiffs replied declaring the S. S. *County of York* against the engagement, and adding, in a postscript, that the steamer would be ready to load on or about the 12th instant. The S. S. *County of York* arrived in Bombay on the 10th June, but from unforeseen circumstances had not a berth in the dock, and was not ready to load until the 23rd instant. In the meantime, on the 18th June, the defendant repudiated the contract on the ground that, having been led by the plaintiffs to expect that the ship would be ready to load on the 12th instant, he had made telegraphic arrangements on that footing, and the ship not being ready he was compelled to ship his goods by other steamers, in order to fulfil his engagements. The plaintiffs accordingly re-let the freight on defendant's account, and brought this suit for the loss incurred in so doing:—*Held*, that the plaintiffs were entitled to succeed, for that nothing had occurred to alter the original contract, which gave them the whole of June in which to provide a steamer. The statement made by the plaintiffs on the 3rd of June (in answer to the defendant's enquiries as to the probable date of the arrival of the steamer) that the steamer would be ready to load on or about the 12th instant, was not a promise, but a mere expression of opinion. The question of estoppel did not arise. On the 22nd June the plaintiffs gave their shippers, amongst others the defendant, a notice to the following effect:—"As the *County of York* will be in dock to-morrow ready to receive cargo, we have to request that your cargo be down not later than Wednesday the 24th instant, &c., &c." *Quære*—whether this was a "notice that the steamer was ready for cargo" as required by the contract. BEYTS, CRAIG & CO. *v.* MARTIN.

[I. L. R. 16 Bom. 389

CONTRACT—*continued.*

(1) CONSTRUCTION OF CONTRACTS—*contd.*

4.—*Custom or usage qualifying contract—Shipment, meaning of.*] On 18th April, 1890, the defendant signed a contract (No. 3053) to buy from the plaintiffs 25 bales grey *dhoties* "June shipment, in four lots, with an interval of four weeks." These goods were not supplied, as they could not be obtained at the price limited. On 24th September, 1890, the defendant gave the plaintiffs an order at an increased limit of price in the following terms:—"Please telegraph your Manchester friends to purchase on my account 25 bales grey *dhoties* relating to No. 3053 at an all-round advance of 1*d.* per pair on original limits for November, December, January shipments, in three monthly lots, about 8 bales to be shipped in each month." This order was accepted and the goods were shipped as follows:—6 bales were handed to the carriers (the S. & N. W. Railway Co.) in Manchester on the 28th November, 1890, and were shipped at Birkenhead on the 9th December, 1890; 6 bales were handed to the same carriers on the 4th December, 1890, and were shipped on the 13th December, 1890; 10 bales were handed to same carriers on the 23rd December and 1 bale on the 24th December, and these 11 bales were shipped on the 6th January, 1891. The defendant refused to accept the goods. He contended that the documents of 18th April and 24th September should be read together, and that the final contract was for November, December, January shipments, in three monthly lots, at intervals of four weeks. He also contended that the shipment on the 9th December, 1890, was a late shipment, and that he was not therefore, bound to accept the goods under the contract. As to this last contention the plaintiffs alleged that by the custom of Bombay in the case of contracts made with members of the Native Piece-goods Association, the date of the carrier's weight note was to be regarded as the date of shipment, and that, under such a contract as the one in question, delivery to the Railway Company or other inland carrier was equivalent to shipment. This custom, it was alleged, originated in consequence of the above Association having agreed that all piece-goods ordered out by its members should be conveyed to Bombay by certain lines of steamers only and by no others. It was stated that, unless some such custom existed, it would in many instances be impossible for Bombay merchants to carry out their contracts, as no steamers of the selected lines might be available. The Judge of the Court of Small Causes at the hearing found that the alleged custom existed, and was generally accepted and understood by merchants and dealers in Bombay. On reference to the High Court, *held* that the contract finally agreed on was that 25 bales relating to No. 3053 (*i.e.*, the document of the 18th April) should be purchased on defendant's account at an all-round advance of 1*d.* per pair on the original limits. Such bales to be shipped in the manner and at the times mentioned in the document of the 24th September, 1890. SMITH *v.* LUDHA GHELLA DAMODAR.

[I. L. R. 17 Bom. 129

CONTRACT—*continued.*

(1) CONSTRUCTION OF CONTRACTS—*contd.*

5.—*Consideration — Compromise of a bonâ fide claim—Good consideration — Agreement to lend money on mortgage—Delay in completion of agreement—Subsequent agreement to pay interest from a certain date—Consideration for such agreement—Right to rescind—Time of essence of contract—Suit by lender against borrower.*] On 31st August 1891 the plaintiff agreed to lend the defendant Rs. 30,000 on a mortgage. By the agreement the mortgagor (defendant) was to clear the title, and the time fixed for completion of the agreement was eight days from its date. The mortgage was not completed within the stipulated time, in consequence of the non-production of the title-deeds by prior mortgagees, who were to be paid off out of the money to be advanced by the plaintiff. On the 9th September 1891 the plaintiff's solicitors wrote to the defendant reminding him that the time for completion had expired, and stating that the plaintiff would require interest to be paid on the money which he had with him lying idle on the defendant's account. On the 24th September 1891 the plaintiff formally tendered the Rs. 30,000 to the defendant, but as no mortgage-deed was then ready for execution, the money was not then paid. The plaintiff was always ready and willing to advance the money, but in consequence of the defendant's delay he insisted on interest being paid from the 24th September 1891. The title-deeds were ultimately produced at the end of November or the beginning of December, and on 7th December 1891 the draft mortgage was sent to the defendant for approval. It contained a clause stipulating for payment of interest from 24th September 1891. On the 9th December 1891, the plaintiff had an interview with the defendant. The two points then discussed were (1) what time after due date should be allowed to the defendant (mortgagor) for payment of interest; (2) whether interest on the principal sum should run from the 24th September 1891. On the first point the plaintiff gave way, allowing defendant fifteen days instead of eight as originally provided. As to the second point, he declined to advance the money unless interest was paid from the 24th September 1891. The defendant ultimately agreed to this. The mortgage-deed was duly engrossed with a stipulation for payment of interest from the 24th September 1891, and the 26th January 1892 was fixed as the day for execution. On that day, however, one of the defendant's daughters who had to execute the deed was absent, and the plaintiff refused to advance the money until her signature was obtained. Subsequently the defendant refused to sign the deed on the ground that it contained the clause for payment of interest from 24th September 1891. He contended that he was not liable to pay interest from that date. The plaintiff brought this suit claiming Rs. 1,865-12-0 as damages for the defendant's breach of agreement. The lower Court held that although the original agreement of 31st August 1891 mentioned no date from which interest should run, the defendant on the 9th December 1891 had agreed to pay it from 24th September 1891 and had made no objection on the point until February 1892. The defendant

CONTRACT—*continued.*

(1) CONSTRUCTION OF CONTRACTS—*concld.*

contended that, if such an agreement was made on the 9th December 1891, it was without consideration, but the Court held that the plaintiff was at that date at liberty to rescind the agreement altogether, and that he had consented not to rescind in consideration of being paid interest from the 24th December 1891. The lower Court accordingly passed a decree for the plaintiff. *Sembie*—that time was not of the essence of the contract, but *held* that, in any case, under the circumstances there was consideration for the agreement made by the defendant to pay interest from the 24th September. The plaintiff clearly regarded himself as entitled to rescind, and at the defendant's request agreed to forbear to do so if the defendant would consent to pay interest from 24th September 1891. The claim of the right to rescind was undoubtedly a real one and made in good faith, and the forbearance to enforce it might well be an inducement to the defendant to agree to the plaintiff's terms, and the principle laid down in *Miles* v. *New Zealand Alford Estate Co.* L. R. 32 Ch. D., 266 applied. DADABHOY DAJIBHOY BARIA *v.* PESTONJI MERWANJI BARUCHA.

[I. L. R. 17 Bom. 457

6.—*Delivery order for goods deliverable monthly—Sub-contract—Tender—Repudiation of contract—Damages.*] The defendant entered into a contract with the Union Mills for the purchase of "90,00) gunny bags at Rs. 21-8 per 100 bags, delivery from October to March, each month 15,000 bags." Subsequently the defendant contracted to sell to the plaintiffs these 90,000 bags "at Rs. 24-2 per 100 bags, delivery from October to March, 15,000 each month, buyers to pay difference cash against delivery order on Mills." In August the defendant made out in the plaintiffs' favour a delivery order directing the mills to deliver 90,000 bags on receiving payment for the same at Rs. 21-8 per 100 bags, and on the same day sent to the plaintiffs a bill showing the amount of difference payable to him by them. The plaintiffs refused the delivery order on the ground that it had not been accepted by the mills; but on a subsequent tender of the order and bill, they offered, on the 5th September, to pay the amount of difference on receiving a delivery order accepted by the mills. The defendant treated the contract as at end and sold the bags in the market. In a suit for damages, *held*, that the defendant sold not only a delivery order, but the right to obtain from the mills 90,000 bags, deliverable in lots of 15,000 per month after payment of the difference; and impliedly undertook that the mills would accept the delivery order and deliver the goods in terms thereof when presented; that the plaintiffs were entitled to get the delivery order at any reasonable time before the first monthly instalment fell due; and further, that the defendant was not entitled to repudiate the contract after the plaintiffs' offer of the 5th September, and having done so was liable in damages. RAMDEO *v.* CASSIM MAMOOJEE.

[I. L. R. 21 Calc. 173

CONTRACT—*continued.*

(2) CONDITIONS PRECEDENT.

7.—*Deposit with Bank—Receipt given for loan—Statement in receipt that loan was repayable on production of receipt—Non-production.*] The plaintiff deposited the sum of Rs. 2,454-7-7 with the defendants' Bank in Bombay as a loan for a year, to bear interest at the rate of four-and-a-half per cent. He was given a receipt for the said sum, which stated that the money was "repayable here on production of this receipt":—*Held*, that the receipt contained the terms of the contract of loan between the plaintiff and the defendants, and that the production of the receipt was a condition precedent to the repayment of the money. DIAS *v.* HONGKONG AND SHANGHAI BANKING CORPORATION.

[I. L. R. 14 Bom. 498

(3) BOUGHT AND SOLD NOTES.

8.—*Sold note differing from bought note—Mistake in name of one of the parties to the contract—Oral evidence to show with whom the contract was really made—Specific Relief Act, ss.* 31, 34—*Damages for breach of contract, right of suit for.*] A contract intended to have been entered into between the plaintiff and the defendant, was entered by a mistake, on the part of the broker in the sold note, as having been made between a third person and the defendant. In a suit brought by the plaintiff on the contract, oral evidence was given to show that the contract was really made between the plaintiff and the defendant. The Judge of the Small Cause Court found that the mistake did not mislead the defendant, and gave judgment in favour of the plaintiff contingent on the opinion of the High Court as to whether the mistake in the sold note was a bar to the plaintiff's suit for damages on the contract:—*Held*, that there was a contract between the parties for breach of which the plaintiff could sue for damages. MAHOMED BHOY PUDDUMSEE *v.* CHUTTERPUT SING.

[I. L. R. 20 Calc. 854

(4) WAGERING CONTRACTS.

9.—*Contracts for forward delivery—Settlement by payment of differences.*] The defendant was sued by the plaintiffs as assignees of one *S*, for "differences" on certain contracts of purchase and sale of cotton and seeds. The defendant contended that these contracts being in the nature of *sutta*, or wagering contracts, no suit would lie in respect of them. The defendant was not a dealer in produce, and entered into these contracts as a speculation. His *modus operandi* was, when he entered into a contract of purchase or sale, to sell or purchase again the same quantity, in one or more contracts, either with the original vendor, or some one else, so as to secure the profit, or ascertain the loss, before the "*Vayda*" day. The contracts were in the usual mercantile form, and were entered into through brokers, the principals not being brought into contact with each other until after the contract was made. *S's* procedure was similar. *S* was a *mukadam* and guarantee broker to the plaintiffs; and he, too, entered into these contracts as a speculation, intending to settle them before the "*Vayda*" day, but prepared, if forced to do so, to perform them in kind:—*Held*, that the contracts sued on were not shown to have been agreements by way of wager. It was a highly speculative mode of doing business, but there is no law against speculation as there is against gambling. Contracts are not wagering contracts, unless it be the intention of both contracting parties, at the time of entering into the contracts, under no circumstances to call for, or give delivery, from, or to, each other. In this case, even the defendant—seeing that he did not know with whom contracts might be made on his behalf by his brokers—must have contemplated the possibility of being called on to give, or take, delivery. TOD *v.* LAKHMIDAS PURSHOTAMDAS.

CONTRACT—*concluded.*

(4) WAGERING CONTRACTS—*concluded.*

[I. L. R. 16 Bom. 441

(5) ALTERATION OF CONTRACTS.

(*a*) ALTERATION BY PARTY.

10.—*Addition of name of attesting witness—Forged attestation.*] In a suit on a hypothecation-bond, dated before the Transfer of Property Act came into operation, and executed in favour of the plaintiff by the father (deceased) of defendant No. 1, it appeared that, after the bond had come into the hands of the plaintiff, the name of defendant No. 1 had been added as that of an attesting witness and that this was a forgery:—*Held*, that the plaintiff was not precluded from recovering by reason of this alteration in the bond sued on. RAMAYYAR *v.* SHANMUGAM.

[I. L. R. 15 Mad. 70

11.—*Material alteration—Addition of a witness's signature subsequent to execution of the bond.*] The fact that the signature of an attesting witness has been affixed to a bond after execution, is not a material alteration, and does not make the bond void. VENKATESH PRABHU *v.* BABA SUBRAYA.

[I. L. R. 15 Bom. 44

(*b*) ALTERATION BY COURT (INEQUITABLE CONTRACTS.)

12.—*Effect of misrepresentation by a party as to part of the subject-matter of a contract.*] Where one party induces another to contract on the faith of representations made to him, any one of which is untrue, the whole contract is in a Court of Equity considered as having been obtained fraudulently. Where a tenant had executed a *kabuliat* containing a stipulation which the landlord had told him would not be enforced, the tenant could not be held to have assented to it, and the *kabuliat* was not the real agreement between the parties. PERTAB CHUNDER GHOSE *v.* MOHENDRONATH PURKAIT.

[I. L. R. 17 Calc. 291

[L. R. 16 I. A. 233

CONTRACT ACT (IX OF 1872.)

———, s. 2.

See PROMISSORY NOTE—FORM.

[I. L. R. 16 Mad. 283

———, s. 10.

See CHARTER-PARTY.

[I. L. R. 14 Bom. 241

[I. L. R. 15 Bom. 389

———, s. 11.

See MINOR—RIGHT TO ENFORCE CONTRACTS.

[I. L. R. 20 Calc. 508

———, ss. 13 and 14.

See CHARTER-PARTY.

[I L. R. 14 Bom. 241

[I. L. R. 15 Bom. 389

———, ss. 15 and 16.

See HINDU LAW—ADOPTION—WHO MAY ADOPT.

[I. L. R. 13 Mad. 214

———, ss. 18 and 19.

See CHARTER-PARTY.

[I. L. R. 14 Bom. 241

[I. L R 15 Bom. 389

———, s. 20.

See SETTLEMENT — CONSTRUCTION OF SETTLEMENT.

[I. L. R. 17 Bom. 407

———, s. 23. *Col.*

1. Illegal Contracts 225
(*a*) Against public policy ... 225

(1) ILLEGAL CONTRACTS.

(*a*) AGAINST PUBLIC POLICY.

1.—s. 23.—*Unlawful consideration—Marriage brokage agreement.*] Plaintiff agreed to give his daughter in marriage to defendant's nephew in consideration of a payment of Rs. 400. It was not alleged that the money was to be a dowry or settlement for the bride. Rs. 200 were paid and defendant executed a bond for the balance. The marriage took place in the *asura* form. The plaintiff now sued on the bond: — *Held*, the consideration for the bond was not unlawful, nor was the contract illegal as being one contrary to public policy under s. 23 of the Contract Act. VISVANATHAN *v.* SAMINATHAN.

[I. L. R. 13 Mad. 83

2.—s. 23.—*Contract for marriage—Consideration, Suit for return of—Marriage brokage.*] The plaintiff sued to recover the value of certain ornaments which he had presented to the defendant's daughter on his agreeing to marry her to plaintiff's brother. The plaintiff alleged that the defendant broke the agreement, and gave his daughter in marriage to another person. He, therefore, asked for the restoration of the ornaments, but the defendant refused to return them: hence the present suit:—*Held*, that the suit was maintainable, there being nothing in the plaintiff's claim which was either against morality or public policy. RAMBHAT *v.* TIMMAYYA.

[I. L. R. 16 Bom. 673

CONTRACT ACT (IX OF 1872), s. 23—*continued.*

(1) ILLEGAL CONTRACTS—*concluded.*

(*a*) AGAINST PUBLIC POLICY—*concluded.*

———, s. 25.—*Consideration—Judgment-debt—Debt barred by limitation.*] A judgment-debt is a debt within the contemplation of section 25, clause (3), of the Contract Act IX of 1872. SHRIPATRAV *v.* GOVIND NARAYAN.

[I. L. R. 14 Bom. 390

1.—s. 27.—*Contract in restraint of trade—Construction of contract.*] A contract under which goods were purchased at a certain rate for the Cuttack market, containing a stipulation that, if the goods went to Madras, a higher rate should be paid for them, is not one in restraint of trade; and where the purchasers sold the goods to a person in Calcutta, who in turn resold to another, who took them to Madras:—*Held*, that the original purchasers were, under the terms of the contract, liable to pay at the enhanced rate. PREM SOOK *v.* DHURUM CHAND.

[I. L. R. 17 Calc. 320

2.—s. 27.—*Partial restraint of trade.*] Section 27 of the Contract Act does away with the distinction observed in the English cases between partial and total restraint of trade, and makes all contracts falling within its terms void unless they fall within its exceptions. The section was intended to prevent a partial as well as a total restraint of trade. *A* and *B*, two *ghat serangs*, entered into a contract with *X* and five others who carried on the business of *dubashes* at Chittagong for the purpose of carrying on their respective businesses in unanimity and not injuring one another's trade. The contract, which was to last for three years, provided, *inter alia*, that *A* and *B* were to act as *ghat serangs* only and do no service to ships in any other capacity; that *X* and the other *dubashes* were to give *A* five vessels, secured by them, every year for him to act as *ghat serang* to; and that *A* was only to act as *ghat serang* to the said five ships, and, with the exception of ships for which he had previously acted as *ghat serang*, he should not act as *ghat serang* or do any other services for ships belonging to any one else. The contract also contained provisions as to the apportionment of the five ships so to be given to *A* amongst the various *dubashes*, and amongst such, an agreement by *X* to give *A* the third ship he should secure. It also contained a provision for the payment of Rs. 1,000 as damages by any one breaking the contract to the person who should suffer by the breach. In a suit by *A* against *X* alleging a breach of the contract by the latter in not giving him the third ship as agreed, and claiming Rs. 1,000

CONTRACT ACT (IX OF 1872), s. 27—*continued.*

by way of damages, *X* pleaded that the contract was void under s. 27 of the Contract Act as being in restraint of trade:—*Held*, that the contention was sound and that the suit must be dismissed. The consideration for the promise by *X* to give the ship to *A* was the agreement by *A* not to carry on any other business than that of a *ghat serang*, and that only in respect of his old ships and the five agreed to be so furnished to him by the *dubashes*. The effect of this agreement was absolutely to restrain *A* from carrying on the business of a *dubash* and to create a partial restraint on his power to carry on the business of a *ghat serang*, and whether or not (even had the latter stipulation not been illegal), the contract would have been void under the provisions of s. 24 of the Act, by reason of part of the consideration being the undertaking by *A* absolutely to refrain from carrying on the business of a *dubash*, it was void for both reasons under the provisions of s. 27, and *A* was not entitled to recover any damages under it. NUR ALI DUBASH *v.* ABDUL ALI.

[I. L. R. 19 Calc. 765

3.—s. 27.—*Contract in restraint of trade—Divisibility of contract.*] One having a license for the manufacture of salt entered into a contract with a firm of merchants, whereby it was provided that he should not manufacture salt in excess of the quantity which the firm at the commencement of each manufacturing season should require him to manufacture; and that all salt manufactured by him should be sold to the firm for a fixed price. The agreement was to be in force for a period of five years. In a suit by the merchants for an injunction restraining the licensee from selling his salt to others:—*Held*, that whether or not the first of these clauses was invalid under s. 27 of the Contract Act, it was separable from the second clause which was not bad as being in restraint of trade. MACKENZIE *v.* STRIRAMIAH.

[I. L. R. 13 Mad. 472

SADAGOPA RAMAIYIAH *v.* MACKENZIE.

[I. L. R. 15 Mad. 79

4.—s. 27.—*Contract in restraint of trade.*] The defendant obtained a license to sell salt in the Salt Factory at Krishnapatam; and he executed an agreement by which he was to manufacture salt in the said factory, as long as the excise system should be in force, and deliver the same to the plaintiffs for sale, and the plaintiffs were to give him a fixed price for it:—*Held*, that the agreement, so far as it restrained the sale of salt to others than the plaintiffs, was bad. RAGAVAYYA *v.* SUBBAYYA.

[I. L. R. 13 Mad. 475

———, s. 29.

See MORTGAGE—CONSTRUCTION OF MORTGAGES.

[I. L. R. 12 All. 175

CONTRACT ACT (IX OF 1872)—*continued.*

———, s. 39.

See INJUNCTION — SPECIAL CASES — BREACH OF AGREEMENT.

[I. L. R. 14 Mad. 18

———, s. 45.

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING.

[I. L. R. 18 Calc. 86

[I. L. R. 17 Bom. 6

———, s. 56.

Contract to carry passengers in ship—Passengers infected with disease—Excuse for non-performance of contract—Implied term in contract—Performance become illegal—Penal Code (XLV of 1860), s. 269.] By a contract made with the plaintiffs the defendants agreed to carry from Bombay to Jeddah, in their steamer *Mobile*, 500 pilgrims who were about to arrive in Bombay from Singapore in the plaintiffs ship the *Stura*. The defendants were to be paid at the rate of Rs. 26 *per* head, and the ship *Mobile* was to receive the pilgrims on the 3rd May 1888. The *Stura* arrived in Bombay on the 1st May with about 600 pilgrims on board, and on the 2nd May the plaintiffs gave notice to the defendants that 500 of them were ready to go on board the *Mobile* on the next day in accordance with the contract. The defendants refused to receive the pilgrims on board the *Mobile*, on the ground that they had come to Bombay in the *Stura*, and that during the voyage of that ship to Bombay there had been an outbreak of small pox on board; that the 500 pilgrims had been in close contact with those who had been suffering from the disease, and that on the 3rd May fresh cases were occurring among the pilgrims brought from Singapore. They pleaded that under these circumstances they were not bound to ship and carry the 500 pilgrims, contending (1) that it was an implied term in the contract that the 500 pilgrims should be free from small-pox or other dangerous disease, and (2) that the performance of the contract had under the circumstances become unlawful (s. 269 of the Penal Code and s. 56 of the Contract Act):—*Held*, that the defendants were bound to carry out the contract. In the absence of proof, that a term providing that the pilgrims should be free from small-pox was to be implied by the usage of the pilgrim-carrying trade, there could be no reason for implying it. The possibility that some of the 500 pilgrims might have the germs of the disease in them owing to their exposure to infection, might make carrying them more expensive and onerous, but it was a contingency which from the very nature of the trade must have been known to the defendants, and if they wished to provide against it they should have done so by express terms:—*Held*, also, that the performance of the contract had not become unlawful. The risk of disease was not greater than would necessarily be incurred in every crowded emigrant ship. But, even if special precautions were desirable under the circumstances, it was for the

CONTRACT ACT (IX OF 1872). s. 56—*continued.*

defendants, who had entered into an absolute agreement, to have taken them. BOMBAY AND PERSIA STEAM NAVIGATION Co., *v.* RUBATTINO COMPANY.

[I. L. R. 14 Bom. 147

——, s. 62.

See RIGHT OF SUIT — CONTRACTS OR AGREEMENTS.

[I. L. R. 16 Bom. 441

——, s. 65.

See SETTLEMENT—CONSTRUCTION OF SETTLEMENT.

[I. L. R. 17 Bom. 407

——, s. 74.

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE.

——, s. 74.

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 261.

[I. L. R. 16 Mad. 474

——, s. 93.

See RIGHT OF SUIT — CONTRACTS OR AGREEMENTS.

[I. L. R. 15 Bom. 1

——, s. 103.

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[I. L. R. 14 Bom. 57

——, s. 124.

See VOLUNTARY PAYMENT.

[I. L. R. 14 Bom. 299

——, s. 133.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

[I. L. R. 15 Bom. 585

——, s. 134.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

[I. L. R. 14 Bom. 267

——, s. 135.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

[I. L. R. 13 Mad. 172

——, s. 141.

See PRINCIPAL AND SURETY—RIGHTS AND LIABILITIES OF SURETY.

[I. L. R. 15 Bom. 48

See VOLUNTARY PAYMENT.

[I. L. R. 14 Bom. 299

CONTRACT ACT (IX OF 1872)—*concluded.*

——, s. 142.

See VOLUNTARY PAYMENT.

[I. L. R. 14 Bom. 299

——, s. 143.

See PRINCIPAL AND SURETY — DISCHARGE OF SURETY.

[I. L. R. 15 Bom. 585

——, s. 148.

See CARRIERS.

[I. L. R. 18 Calc. 520

——, s. 151.

See CARRIERS.

[I. L. R. 18 Calc. 520

See RAILWAY COMPANY.

[I. L. R. 17 Bom. 723

——, s. 152.

See CARRIERS.

[I. L. R. 18 Calc. 520

——, s. 178.

See LIEN.

[I. L. R. 18 Calc. 57

——, s. 201.

See LIMITATION ACT, 1877, ART. 89.

[I. L. R. 12 All. 541

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS.

[I. L. R. 12 All. 541

——, ss. 215, 216.

See PRINCIPAL AND AGENT — COMMISSION AGENTS.

[I. L. R. 16 Mad. 238

——, s. 218.

See LIMITATION ACT, ART. 89.

[I. L. R. 12 All. 541

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS.

[I. L. R. 12 All. 541

——, s. 230.

See PRINCIPAL AND AGENT—LIABILITY OF AGENTS.

[I. L. R. 17 Calc. 449

CONTRACTORS.

See NEGLIGENCE.

[I. L. R. 17 Bom. 307

CONTRIBUTION.

——, right to—

See PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS.

[I. L. R. 21 Calc. 496

CONTRIBUTION—*concluded.*

——, Suit for—

See LIMITATION ACT, 1877, ART. 99.

[I. L. R. 15 Mad. 258

See LIMITATION ACT, 1877, ART. 107.

[I. L. R. 20 Calc. 18

See LIMITATION ACT, 1877, ART. 132.

[I. L. R. 12 All. 110

See LIS PENDENS.

[I. L. R. 13 All. 371

See MULTIFARIOUSNESS.

[I. L. R. 12 All. 110

See SMALL CAUSE COURT, MOFSUSIL—JURISDICTION — CONTRIBUTION, SUIT FOR.

[I. L. R. 15 Mad. 155

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[I. L. R. 16 Bom. 161

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[I. L. R. 19 Calc. 322

CONVERT FROM HINDUISM TO MAHOMEDANISM.

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[I. L. R. 18 Calc. 264

See HINDU LAW—MARRIAGE.

[I. L. R. 18 Calc. 264

CONVERTS FROM ONE SECT OF HINDUISM TO ANOTHER.

See HINDU LAW—CUSTOM—ADOPTION.

[I. L. R. 17 Calc. 518

CONVERTS TO CHRISTIANITY.

See DIVORCE ACT, S. 2.

[I. L. R. 14 Mad. 382

[I. L. R. 18 Calc. 252

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF INHERITANCE.

[I. L. R. 19 Calc. 289

CONVEYANCE.

See STAMP ACT, 1879, S. 24.

[I. L. R. 15 Bom. 675

COPARCENARY.

See MALABAR LAW—CUSTOM.

[I. L. R. 15 Mad. 60

See PARTITION—RIGHT TO PARTITION.

[I. L. R. 20 Calc 379

COPY OF DECREE AND JUDGMENT, TIME NECESSARY FOR OBTAINING.

See LIMITATION ACT, 1877, S. 12.

[I. L. R. 14 Mad. 365

[I. L. R. 15 Mad. 169

[I. L. R. 12 All. 79, 105, 461

See LIMITATION ACT, 1877, ART. 177.

[I. L. R. 15 Mad. 169

COPY OF DOCUMENT FILED WITH PLAINT.

See STAMP ACT, 1879, SCH. I, ART. 22.

[I. L. R. 15 Bom. 687

COPYRIGHT.

1.—*Translation—Act XX of* 1847—*Act XXV of* 1867.] A person who translates a book into another language is not thereby guilty of an infringement of copyright. ABDURRUHMAN *v.* MAHOMED SHIRAZI.

[I. L. R. 14 Bom. 586

2.—*Form of registration—"Selection" of poems, copyright in—Infringement of copyright by publication of copy before registration—Assignments of copyright previous to registration—Limitation of suits for infringement of copyright—Statute 5 & 6 Vic., c. 45.*] The plaintiffs, the partners of a firm *M. & Co.*, were the proprietors, registered under 5 & 6 Vic., c. 45, of the copyright of a selection of songs and poems, composed by numerous well-known authors, which was prepared by one *P*, and originally published in 1861. Since the original publication the book ran through several editions, one of which was published in the year 1882. The book was registered under the provisions of the above Statute on the 8th February 1889, the name of both the publisher and proprietor being entered in the register as *M. & Co.*, the firm's address being given, and the date of the first publication was entered as the 19th July 1861. The poems contained in the book were arranged by *P*, not in chronological order of their production, but in gradation of feeling and subject, and at the end of the book were given some notes, critical and explanatory. On the 15th January 1889 the defendant published, at Calcutta, a book containing the same selection of poems and songs as was contained in *P's* book. The arrangement, however, of the defendant's book differed from *P's* in that the poems of each author were placed together and in order of their composition. In one of the poems the defendant printed forty lines, which were contained in the work by the original author, but which were omitted by *P*, and in another poem one line. In many places there were differences of reading in

COPYRIGHT—*continued.*

the two books, and in more of punctuation. In the defendant's book some of the titles to the poems, which had been assigned thereto by *P* and not by the original authors, appeared, as well as a good many of *P's* notes, some with acknowledgment and some without. With each poem the defendant gave a mass of notes, critical and explanatory, and he also prefixed to the poems of each author a biographical notice. The suit was instituted on the 27th February 1890, and the plaintiffs complained that the publication of defendant's book constituted a breach of their copyright, and prayed for the usual relief by way of injunction and damages. They contended that although the copyright in the works of the original authors had long lapsed, they were entitled to the copyright in the "selection" made by *P*. It was contended on behalf of the defendant that there could be no copyright in such a selection; that if any existed the defendant's book did not infringe it; that the plaintiffs' book being registered as first published in 1861 and the infringement charged being in respect of the edition of 1882, and there being no evidence to show that the same selection was contained in the latter as in the former edition, the plaintiffs were not entitled to the relief prayed for; that the author of the plaintiffs' book being *P*, in whom the copyright would *primâ facie* be, and the property being registered as in the plaintiffs' firm, the registry was bad, as the assignment of the copyright to the plaintiffs was not shown; that the registration was also bad, as the entry merely contained the name and address of the plaintiffs' firm, and not the individual names and addresses of the partners of the firm; that the publication of the defendant's book having been before the date of registration, the suit would not lie; and that the suit was barred by the special limitation provided by section 26 of the Statute 5 and 6 Vic., c. 45:—*Held*, that such a "selection" could be the subject-matter of copyright, the true principle applicable to such cases being that one person is not at liberty to use or avail himself of the labour which another has been at for the purpose of producing his work, and so take away the result of the other's labour, or in other words his property. *Held*, further, that the defendant's book constituted a piracy of the plaintiffs' book, and had infringed their copyright, and that they were entitled to the relief they sought. *Held*, also, that in the absence of any evidence to the contrary, it was reasonable to assume that successive issues of a book of this kind under the same name are substantially the same book; that it was unnecessary that the registry should show an assignment of the copyright by *P* to the plaintiffs: *Weldon* v. *Dicks*, L. R. 10 Ch. D 247, followed; that the registration was not bad by reason of the names and addresses of the partners of the firm not being given: *Low* v. *Routledge*, 33 L. J. Ch. 717, and *Weldon* v. *Dicks*, L. R. 10 Ch. D. 247, followed; that the title to copyright is complete before registration, which is only a condition precedent to the right to sue, and that the plaintiffs had not therefore lost their right of action by reason of the defendant's book being published before theirs

COPYRIGHT—*concluded.*

was registered: *Tuck* v. *Priester*, L. R. 19 Q. B. D. 629, and *Gourband* v. *Wallace*, 25 W. R. 604; W. N. 1877 p. 130, followed; and that, assuming that the rule of limitation provided by section 26 of the Statute was applicable in this country, the suit was not barred by limitation: *Hogg* v. *Scott*, L. R. 18 Eq. 444, followed. MACMILLAN *v.* SURESH CHUNDER DEB.

[I. L. R. 17 Calc. 951

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——, Principal Officer of—

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[I. L. R. 21 Calc. 60

——, Suit against—

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[I. L. R. 14 Bom. 286

CO-SHARERS. *Col.*

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[I. L. R. 15 All. 136

See LIMITATION ACT, 1877, ART. 127.

[I. L. R. 16 Bom. 191

See MAHOMEDAN LAW—INHERITANCE.

[I. L. R. 14 Mad. 324

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION — CO-SHARERS.

[I. L. R. 12 All. 229

See PARTITION—PRIVATE PARTITION.

[I. L. R. 20 Calc. 45

See PARTITION—RIGHT TO PARTITION.

[I. L. R. 20 Calc. 379

See CASES UNDER PRE-EMPTION.

——, Application by one of several.

See BENGAL TENANCY ACT, s. 188.

[I. L. R. 17 Calc. 538

——, Execution of Decree obtained by one of several.

See BENGAL TENANCY ACT, s. 170.

[I. L. R. 17 Calc. 390

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——, Mortgage by—

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[I. L. R. 20 Calc. 533

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[I. L. R. 15 Bom. 186

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[I. L. R. 20 Calc. 533

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See CASES UNDER BENGAL TENANCY ACT, S. 188.

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[I. L. R. 15 Mad. 484

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[I. L. R. 19 Calc. 760

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION.

[I. L. R. 15 Bom. 24

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[I. L. R. 12 All. 301

(1) GENERAL RIGHTS IN JOINT PROPERTY.

1.—*Payment of arrears of Government Revenue by one co-sharer, Effect of — Charge—Lien—Act XII of* 1881 (*North-Western Provinces Rent Act*), *ss.* 93, 177, 178, 181—*N. W. P. Land Revenue Act* (*XIX of* 1873), *ss* 146, 148—*Jurisdiction of Civil Court—Salvage, Maritime Civil, Principle of—Act IV of* 1882 (*Transfer of Property Act*), *s.* 100.] A co-sharer in a *mahal*, who was also the *lambardar*, paid arrears of Government revenue for the years 1882, 1883, and part of 1884, in respect of certain lands in the *mahal* which were the exclusive property of another co-sharer. These lands were subject to simple mortgages executed in 1873, upon which decrees were obtained in 1884, and had been sold in execution of these decrees in 1887. The co-sharer *lambardar* having obtained a decree in a Court of Revenue against the mortgagors under s. 93 (*g*) of the N.-W. P. Rent Act (XII of 1881) for recovery of the arrears of revenue paid by him, sought to execute that decree under s. 177 of the Act by sale of the lands which had been sold in 1887; and thereupon the auction-purchaser at that sale objected under s. 178, and the objection having been overruled, brought a suit, as authorised by s. 181, in a Civil Court to establish his title to the lands and to have them protected from sale in execution of the Court of Revenue decree. This suit was decreed, and the decree, not having been appealed against, became final. Subsequently, the co-sharer *lambardar* brought a suit in the Civil Court in which he claimed a decree for enforcement of lien by sale of the land for the amount of the Court of Revenue decree, and for a declaration that the

CO-SHARERS—*continued.*

(1) GENERAL RIGHTS IN JOINT PROPERTY —*concluded.*

said lien "which is on account of Government," be declared preferential to the mortgages of 1873, the decrees thereon of 1884, and the sales under those decrees of 1887. He claimed this lien not only in respect of the arrears of Government revenue paid, but also in respect of future interest:—*Held* by the Full Bench (MAHMOOD, J., dissenting):—(i) That the Legislature had not given or recognized in the North-Western Provinces any such right of charge or lien in favour of a person paying Government revenue as was claimed here, or provided any means by which such a charge could be enforced, and that any such charge would be at variance with the policy and intention of the Government as disclosed in its legislative enactments. (ii) That no Civil Court had jurisdiction to entertain the suit, and no Court of Revenue had jurisdiction to make a decree for sale of the immoveable property or a decree in execution of which the immoveable property could be sold to the prejudice of incumbrances to which it was subject. (iii) That it was not the intention of the Legislature that a Civil Court should have jurisdiction to invest, by declaration or otherwise, a decree of a Court of Revenue with the attributes of a decree for sale such as could be passed by a Civil Court in a suit for sale under the Transfer of Property Act, 1882. (iv) That there is no general principle of equity to the effect that whoever, having an interest in an estate, makes a payment in order to save the estate, obtains a charge on the estate; and, therefore in the absence of a statutory enactment, a co-sharer who paid the whole revenue and thus saved the estate, does not, by reason of such payment, acquire a charge on the share of his defaulting co-sharer. *Kinu Ram Das* v. *Mozaffer Hosain Shaha*, I. L. R. 14 Calc. 809, approved. (v) That the principle of Maritime Civil Salvage had no application to the case, and that no analogy could exist between the case of a salvor in Maritime Civil Salvage and the case of a co-sharer in a *mahal* to whom s. 146 or s. 148 of the North-Western Provinces Land Revenue Act (XIX of 1873) applied. *Leslie* v. *French*, L. R. 23 Ch. D. 552, and *Falcke* v *Scottish Imperial Insurance Company*, L. R. 34 Ch. D. 34, referred to. SETH CHITOR MAL *v.* SHIB LAL.

[I. L. R. 14 All. 273

(2) ENJOYMENT OF JOINT PROPERTY.

2.—*As between tenants in common, refusal of decree for possession, for damages, or for an injunction—Resistance of one co-sharer to another's entering, not in denial of his title, but to prevent his interfering with cultivation by the former—Money compensation.*] Land being held by two persons in common, one of whom was in actual occupation of part, cultivating it as if it had been his separate property, the other attempted to enter upon the same land, in order to carry on operations thereon inconsistent with the work already being carried on by the former, who resisted and prevented this attempted entry:—*Held*,

CO-SHARERS—*continued.*

(2) ENJOYMENT OF JOINT PROPERTY —*continued.*

that the resistance being made by the co-sharer in occupation simply with the object of protecting himself in the profitable use of the land, in good husbandry, and not in denial of the other's title, such resistance was no ground for proceedings on the part of the other, to obtain a decree for joint possession, or for damages: nor would granting an injunction be the proper remedy. As the Courts in Bengal, in cases where no specific rule exists, are to act according to "justice, equity, and good conscience," so, on its being found that, where land was held in common between the parties, one of them was in the act of cultivating a part of the land which was not actually used by the other, it would not have been consistent with this rule to restrain the former from proceeding with his proper cultivation: but money compensation, at a proper rate, in respect of the exclusive use by, and benefit to, the one who, though possessing in common, was carrying on cultivation for himself, not unsuitable in itself, was awarded between the parties. WATSON & Co. *v.* RAMCHUND DUTT.

[I. L. R. 18 Calc. 10
[L. R. 17 I. A. 110

Reversing on Appeal, RAMCHAND DUTT *v.* WATSON & Co.

[I. L. R. 15 Calc. 214

3.—*Joint ownership—Use of joint property as between co-owners—Rights amongst themselves of co-sharers of joint property where there is a profitable use by one of them without others being excluded —Ferry worked by one of the co-owners of land.*] Property does not cease to be joint merely because it is used so as to produce more profit to one of the joint owners, who has incurred expenditure for that purpose, than to the others, where the latter are not excluded. Joint property being used consistently with the continuance of the joint ownership and possession, without exclusion of the co-sharers who do not join in the work, there is no encroachment on the rights of any of them, as regards common enjoyment, so as to give ground for a suit. The defendant, a co-sharer in village lands, without claiming to restrain competition, acted upon the right that a ferry may be established in India by a person on his own property taking toll from strangers, and that he may acquire such a right, by grant or user, over the property of others, whether a co-sharer with them or not. He used property that he owned jointly with the plaintiffs, his co-sharers, excluding none of them. As no grant was ever made to him he could only have set up an exclusive right by showing that he had either dispossessed them, or had had adverse possession for twelve years, or that he had used the ferry for twelve years as of right. The question, however, of any exclusive right in the defendant had not arisen. For the parties being co-owners, the defendant had made use of the joint property in a way quite consistent with the continuance of the joint ownership and joint

CO-SHARERS—*continued.*

(2) ENJOYMENT OF JOINT PROPERTY —*concluded.*

possession. *Watson and Co.* v. *Ramchund Dutt*, I. L. R. 18 Calc. 10; L. R. 17 I. A. 110, distinguished in regard to the exclusion of co-sharers, which there took place, and referred to as to caution to be exercised by Courts in interfering with the enjoyment of joint estates as between their co-owners. LACHMESWAR SINGH *v.* MANOWAR HOSSAIN.

[I. L. R. 19 Calc. 253
[L. R. 19 I. A. 48

4.—*Erection of buildings on joint property—Building by one co-sharer against the wish of others—Suit for injunction to restrain building—Discretion of Court—Act I of* 1877 *(Specific Relief Act), s.* 54.] One of several co-sharers in a *mahal* having begun to erect certain *kachcha* buildings upon the common land, another co-sharer, three or four days after the building had commenced, brought a suit for an injunction to restrain the continuance thereof, on the ground that the defendant was ousting the plaintiff as a co-sharer from a portion of the common land. It was found that the defendant was building upon land which was in excess of the share which would come to him on partition, and that on partition the plaintiff could not be adequately compensated:—*Held* by the Full Bench that the plaintiff was entitled to a perpetual injunction restraining the defendant from proceeding further with the building, and directing that the building so far as it had proceeded be pulled down, and prohibiting the defendant from building on the land as exclusive owner at any future time. *Paras Ram* v. *Sherjit*, I L. R. 9 All. 661, referred to. *Per* STRAIGHT J., that it was for the defendant appellant to show that the lower Appellate Court had exercised a wrong discretion in granting the injunction, and that, this not having been shown, the High Court ought not to interfere. SHADI *v.* ANUP SINGH.

[I. L. R. 12 All. 436

(3) SUITS WITH RESPECT TO THE JOINT PROPERTY.

5.—*Damages, suit for—Non-joinder of lessee as plaintiff—Parties.*] In a suit by one of two lessees against the lessor for damages for cancelling the lease, the other lessee was made a defendant:—*Held*, that the suit was not bad for non-joinder of the second lessee as plaintiff; nor for the reason that the plaintiff could not prosecute the suit against him or obtain any relief against him; and that he was rightly made a defendant in the suit. *Kattusheri Pishareth Kanna Pisharody* v. *Vallotil Manakel Narayanan Somayajipad*, I. L. R. 3 Mad. 234, followed. VITHILINGA PADAYACHI *v.* VITHILINGA MUDALI

[I. L. R. 15 Mad. 111

6.—*Rent, suit for—Parties—Right of some of several co-sharers to sue alone—Refusal to join suit as plaintiffs.*] It is only when plaintiffs can show that those entitled as co-sharers to join with them

CO-SHARERS—*continued.*

(3) SUITS WITH RESPECT TO THE JOINT PROPERTY—*continued.*

have refused to join, or have otherwise acted prejudicially to the plaintiffs' interests, that they are entitled to sue alone and make their co-sharers defendants in the suit. DWARKANATH MITTER *v.* TARA PROSUNNA ROY.

[I. L. R. 17 Calc. 160

JIBANTI NATH KHAN *v.* GOKOOL CHUNDER CHOWDHRY.

[I. L. R. 19 Calc. 760

7.—*Rent, suit for—Co-sharers suit by one of several, for separate share of rent, or in alternative for whole rent due if more than share claimed should be found due—Parties.*] The plaintiffs, some of the co-sharers in certain lands, instituted a suit against a tenant and the remaining co-sharer *P*, alleging that the tenant held under a *pottah* granted by all the co-sharers; that rent was due from him for the period in suit; and that they had ascertained from *P* that he alleged that he had received his share of the rent for that period from the tenant, and that he refused to join as plaintiff in the suit. They accordingly prayed (*a*) for a decree for the amount of their share of the rent against the tenant; (*b*) if it should appear that any part of *P's* share of the rent remained unpaid, the requisite extra Court-fee might be received and a decree made for whole of the arrears in favour of themselves and *P*, and that the latter might, if he consented, be made a co-plaintiff; (*c*) that if it appeared that *P* had realized more than his share of the rent, a decree might be made against him for the excess and against the tenant for the balance. The plaint also asked for costs and further relief. The tenant contested the suit and submitted that it was in effect a suit for plaintiffs' share of the rent only and could not therefore be maintained. He further pleaded that the plaintiffs and *P* were members of a joint Hindu family, of which *P* was the manager, and that, under arrangement with the latter, he had applied the rent due under the *pottah* towards the liquidation of debts due under bonds in *P's* name, but for which the joint family were liable. The first Court dismissed the suit on the preliminary issue that it was in substance a suit for a specific share of the rent by some only of the co-sharers, and that, there being no agreement by the tenant to pay the co-sharers their respective shares of the rent separately, such a suit would not lie:—*Held* (upholding the order of the lower Appellate Court), that the order of the first Court was wrong. The suit as framed was necessarily a suit in the alternative; and as the plaintiffs were necessarily not aware whether any portion of *P's* share of the rent was due or not, but believing that none was due, they could only claim their share, asking to have the plaint amended so as to include the whole rent due if it should appear that anything was due to *P*, and thus bring the suit within the rule that, in the absence of special agreement between a tenant and co-sharers to pay their rateable proportion of the rent, a suit

CO-SHARERS—*concluded.*

(3) SUITS WITH RESPECT TO THE JOINT PROPERTY—*concluded.*

by one of the co-sharers must be for the entire rent due, making his co-sharers defendants if they refused to join as plaintiffs. The prayer of the plaint fully provided for this, and the suit should have been tried on its merits and the plaint amended if the facts proved showed that any rent remained unpaid and due to *P*, as asked for by the plaintiffs. PERGASH LAL *v.* AKHOWRI BALGOBIND SAHOY.

[I. L. R. 19 Calc. 735

8.—*Rent, suit for—Parties—Plaintiffs—Suit for adjustment of proportionate share of rent by one co-sharer—Lease, construction of.*] A lease of certain land of which the plaintiff was a fractional co-sharer provided as follows:—"After the land in question is fully brought under cultivation you shall pay rent without default, according to *kists* year after year, as *per* measurement and *jamabandi* at the said rate of Company's 10 annas 10 *gundahs* for the quantity of land that will be left after deducting beds of *khals*, pasture lands, lands unfit for cultivation, places of worship, *hajats*, *pujai basha batis*, and your remuneration for reclamation, upon measurement of all the lands by the standard rod used in the *abads* of the said *taluq*. On no account shall any larger amount be demanded." In a suit instituted when the land had been fully brought under cultivation, and after measurement, the plaintiff claimed only her own share of the rent and her co-sharers did not join her as co-plaintiffs, nor were they made defendants:—*Held*, that the suit was not maintainable. What the lease contemplated under the circumstances which had arisen was a final adjustment of the rent, and such an adjustment could be obtained only by a suit brought by all the co-sharers or by some of them if the others refused to join, but in that case the suit must be for the adjustment of the entire rent, and all the necessary parties must be properly before the Court. BINDU BASHINI DASI *v.* PEARI MOHUN BOSE.

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(1) SPECIAL CASES.

1.—*Admiralty or Vice-Admiralty—Practice—Appeal from original side in exercise of Admiralty or Vice-Admiralty jurisdiction—Increased costs caused by excessive bail in salvage case.*] In an action of salvage in which a ship was arrested and the bail asked for was found to be excessive, the Court held that the promovents must pay to the impugnants the costs required by the bail being excessive. *The George Gordon*, L. R. 9 P. D. 46, followed. Where an appeal was held to lie under the High Court Charter and the Letters Patent from the Original Side in the exercise of Admiralty or Vice-Admiralty jurisdiction, and the procedure was mainly governed by the Civil Procedure Code, the usual practice as to costs on appeal was followed. IN THE MATTER OF THE SHIP "CHAMPION."
[I. L. R. 17 Calc. 84

2.—*Appeal—Costs of successful appellant refused — Failure to prove exclusive title when set up.*] The costs of the appeal, though successful were refused, because the defendant, appellant, had set up as his defence an exclusive title, which he had failed to prove. LACHMESWAR SINGH *v.* MANOWAR HOSSEIN.
[I. L. R. 19 Calc. 253
[L. R. 19 I. A. 48

3.—*Attorney and Client—Change of Attorneys during a pending suit—Costs of both Attorneys realized by the second Attorney—Attorney's lien for costs.*] Case in which, upon a change of attorneys during the pendency of a suit, there being no express agreement as to the first attorney's costs, it was *held* that the second attorney, on recovering the costs of both attorneys from the client after notice that the costs of the first attorney were unpaid, did so on behalf of the first attorney to the extent of his share of the costs. ORR *v.* NOGENDRA NATH SEN.
[I. L. R. 19 Calc. 368

4.—*Attorney and Client—Lien of Attorney for costs—Application for costs to be paid out of money in hands of Receiver in the suit—Practice.*] The attorneys for the plaintiff claimed a lien on the amount in the hands of the Receiver of the Court to the credit of the plaintiff in a partition-suit, for the costs of the suit which had been secured by the deposit with the attorneys of the title-deeds of the plaintiff's family dwelling-house which formed a portion of the property sold by the Receiver under the decree in the suit:—*Held*, on an application by the attorneys for payment to them of such costs, that the lien could not be given effect to in summary-proceedings of this nature, but should form the subject of a regular suit. Except in such a suit it is not the practice

COSTS—*continued.*

(1) SPECIAL CASES—*continued.*

of the Court to make any order for payment of costs between an attorney and his client. *Domun v. Emaum Ally*, I. L. R. 7 Calc. 401, followed. MAHOMMED ZOHURUDDEEN *v.* MAHOMMED NOOROODDEEN.

[I. L. R. 21 Calc. 85

5.—*Mortgage—Right to personal decree for costs against mortgagor*] Where a mortgage-deed provided that the costs of any proceedings necessitated by the default of tenants in payment of rents should be deducted from the revenues, and there was no express promise by the mortgagor to personally pay those expenses:—*Held*, that the mortgagee was not entitled to a decree for such costs against the mortgagor personally. GANESH DHARNIDHAR MAHARAJDEV *v.* KESHAVRAV GOVIND KULGAVKAR.

[I. L. R. 15 Bom. 625

6.—*Mortgage—Civil Procedure Code (Act XIV of* 1882), *s.* 221—*Costs due by mortgagee to mortgagor—Set-off against the mortgage-debt—Suit for redemption.*] The mortgagor is entitled to set off or deduct the amount of costs payable to him under the decree against or from the mortgage-debt payable by him. If the amount of the costs be larger than the mortgage-debt, the mortgagor is entitled to obtain possession at once of the mortgaged property and to recover the balance against the mortgagee. SIDU *v.* BALI.

[I. L. R. 17 Bom. 32

7.—*Official Assignee—Appeal against order of adjudication of insolvency.*] The Official Assignee is entitled to his costs of appearing in an appeal against an order of adjudication. IN THE MATTER OF HAROON MAHOMED.

[I. L. R. 14 Bom 189

8.—*Preliminary issue—Costs of preliminary issue in partition-suit—Stamp in partition-suit.*] The plaintiff brought a suit to have 99 items of property partitioned. The plaint bore a Court-fee stamp of Rs. 10. The defendants admitted that three of the properties were ancestral and joint, but as to the other items the 2nd defendant stated that they were the self-acquired property of her deceased husband, and contended that the plaint was insufficiently stamped, as the object of the suit was to obtain a declaration of title to and possession of properties in which the plaintiff had no interest. An issue was raised on this point, and, on this issue the Subordinate Judge allowed the objection and rejected the plaint. On appeal, *held* by PETHERAM, C. J., and NORRIS, J., that the plaint was sufficiently stamped. The only relief prayed for was partition, and for the purposes of the stamp the cause of action which is stated in the plaint, and that only, must be looked at. The members of the Appeal Bench, however, differed in opinion as regards the question of costs, PETHERAM, C. J, being of opinion that the costs of the appeal should be treated in the same way as the rest of the costs in the case, and be divided between the parties to the partition;

COSTS—*continued.*

(1) SPECIAL CASES—*concluded.*

and NORRIS, J., holding that the respondent having failed on appeal ought to pay the costs: and on this question an appeal was preferred under the Letters Patent, cl. 15. *Held*, by PRINSEP and TREVELYAN, JJ.—The costs of the appeals were severable from the general costs of the suit, and therefore, though the suit was one for partition, the principle that the unsuccessful party must pay the costs was applicable so far as the appeals were concerned; the respondent therefore should pay all the costs in the two appeals *Held* by PIGOT, J.—The respondent should pay in any event her own costs of the preliminary issue and of the appeal, but that, as to the plaintiff's costs of that issue and of the appeal, they should be in the discretion of the Court as between the parties to this appeal, such costs being in no case to form part of the costs of the partition. MOHENDRO CHANDRA GANGULI *v.* ASHUTOSH GANGULI.

[I. L. R. 20 Calc. 762

(2) TAXATION OF COSTS.

9.—*Costs of Government Solicitor where suit against Government has been dismissed with costs—Power of Taxing Officer.*] The Government Solicitor, who receives a monthly salary as such, receives no further payment from Government in respect of any costs of litigation to which Government is a party, except "out fees" or actual payments made by him on behalf of Government, and pays no fees when he instructs the Advocate-General; but, under his arrangement with Government, he is entitled to retain the costs decreed to Government, if recovered, and he then pays to the Advocate-General the fees of counsel allowed by the Taxing Officer:—*Held*, that when a suit against Government is dismissed with costs, costs should be taxed in the usual way, and the Taxing Officer cannot enquire into the arrangement as to remuneration of its law officers by Government. AZIMULLA SAHEB *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 15 Mad. 405

(3) COSTS OUT OF ESTATE.

10.—*Partnership suit—Deceased partner—Costs of his legal representative ordered out of the estate he represents—Beneficiaries not represented—Parties.*] The plaintiff, as Administrator-General and Administrator of the estate of one *H*, filed this suit against the partners of *H* to recover *H's* share in the partnership. A decree was made referring it to the Commissioner to take the accounts of the partnership, &c., and the plaintiff's costs were ordered by the said decree to be paid out of the partnership assets, and, in case such assets should be insufficient, it was ordered that the plaintiff do recover his costs from the estate of *H*. There were no assets of the partnership. The plaintiff now took out a summons calling on *R* as son and legal representative of *H* to show cause why he should not pay the said costs, or why, in default, the estate of *H* in his hands should not be attached. *R* objected that he was

COSTS—*concluded.*

(3) COSTS OUT OF ESTATE—*concluded.*

no party to this suit when the decree was made, and neither he nor his father's estate in his hands was bound by it:—*Held*, that the summons must be dismissed. The decree, so far as it purported to affect the estate of *H*, was not a valid decree, inasmuch as the person or persons beneficially interested in that estate were not then before the Court. LOUDON *v.* KHATAO ROWJI.

[I. L. R. 16 Bom. 515

COUNSEL.

—*Authority of Counsel to compromise a case on behalf of his client—Nature of power conferred by Counsel's retainer.*] A counsel, unless his authority to act for his client is revoked, and such revocation is notified to the opposite side, has, by virtue of his retainer and without need of further authority, full power to compromise a case on behalf of his client; and the Court will not disturb a compromise so entered into, unless it appears that it was entered into under a mistake and that some palpable injustice has been thereby caused to the client. *Strauss* v. *Francis*, L. R. 1 Q. B. 379; *Matthews* v. *Munster*, L R. 20 Q. B. D. 141; and *In re West Devon Great Consols Mine*, L. R. 38 Ch. D. 51, referred to. JANG BAHADUR SINGH *v.* SHANKAR RAI.

[I. L. R. 13 All. 272

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[I. L. R. 17 Calc. 944

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[I. L. R. 17 Calc. 872
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[I. L. R. 15 All. 141

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[I. L. R. 18 Calc. 133

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[I. L. R. 19 Calc. 678

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[I. L. R. 20 Calc. 111

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COURT-FEES ACT (VII OF 1870).

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[I. L. R. 12 All. 129

——, s. 5.

See LIMITATION ACT, s. 4.

[I. L. R. 12 All. 129

1.—s. 5—*Court-fee on memorandum of appeal—Finality of taxing officer's decision—Mistake—Civil Procedure Code Amendment Act (VI of 1892), s. 3.*] Where an appellant, whose memorandum of appeal had been declared by the Taxing Officer of the Court to be insufficiently stamped, applied for relief under s. 3 of Act No. VI of 1892, and it was found that the report of the Taxing Officer was erroneous, and that the correct stamp had as a matter of fact been put on the memorandum of appeal:—*Held*, that the appellant was entitled to the relief sought, notwithstanding the provisions of s. 5 of the Court-Fees Act, VII of 1870. BADRI PRASAD *v.* KUNDAN LAL.

[I. L. R. 15 All. 117

2.—s. 5 and s. 12—*Finality of taxing officer's decision as to Court-fee—"Final," Meaning of—Duty of Court-fees Act Officer.*] The word "final" in s. 5 of the Court-Fees Act has the same meaning as in s. 12, though it is applied to a different subject. The cases in which it has been held that, notwithstanding the use of this word in s. 12, an appeal lies from a decision as to the category in which the relief sought by a plaintiff or appellant falls, do not mean that decisions which the section declares to be "final" are nevertheless appealable, but that the question of category is not a "question relating to valuation," and therefore is not declared by the section to be final. In both s. 5 and s. 12 "final" is used in its ordinary legal sense of unappealable. A decision under s. 5 of the Act is not open to appeal, revision or review, and is final for all purposes, and no means have been provided or suggested by the Legislature for questioning it. The officer mentioned in s. 5 of the Court-Fees Act is not bound to advise parties as to the stamp required under the Act, or to give them notice that they have not sufficiently stamped documents which the Act requires to be stamped before presentation. BALKARAN RAI *v.* GOBIND NATH TIWARI.

[I. L. R. 12 All. 129

COURT-FEES ACT (VII OF 1870) -*contd.*

——, s. 6.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES.

[I. L. R. 15 Mad. 29

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[I. L. R. 12 All. 57

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[I. L. R. 12 All. 57

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See VALUATION OF SUIT—APPEALS.

[I. L. R. 16 Mad. 310

[I. L. R. 13 All. 94

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[I. L. R. 17 Calc. 680

[I. L. R. 13 Mad. 56

[I. L. R. 14 Mad. 169, 480

[I. L. R. 15 Bom. 416

[I. L. R. 17 All. 63, 378

[I. L. R. 17 Bom. 41, 56

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[I. L. R. 12 All. 129

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See VALUATION OF SUIT—APPEALS.

[I. L. R. 15 Mad. 181, 288

——, ss. 10 & 11.

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[I. L. R. 12 All. 129

——, ss. 10 & 11.—*Dismissal of suit—Civil Procedure Code*, 1882, *ss.* 54, 56.] The "dismissal" of a suit under s. 10 or s. 11 of the Court-Fees Act has the same effect as that provided by s. 56 of the Code in the case of "rejection" of a plaint under s. 54. BALKARAN RAI *v.* GOBIND NATH TIWARI.

[I. L. R. 12 All. 129

——, s. 11.

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[I. L. R. 15 Bom. 416

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[I. L. R. 12 All. 129

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[I. L. R. 14 Mad. 169

COURT-FEES ACT (VII OF 1870), s. 12 —*continued.*

See VALUATION OF SUIT—APPEALS.

[I. L. R. 15 Mad. 181, 288

See VALUATION OF SUIT—SUITS.

[I. L. R. 14 Mad. 169

——, s. 16.

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[I. L. R. 19 Calc. 272

——, s. 17.

See VALUATION OF SUIT—APPEALS.

[I. L. R. 16 Mad. 415

See VALUATION OF SUIT—SUITS.

[I. L. R. 15 Bom. 82

——, s. 19 and s. 31.—*Complaints made by Municipal officers—Process fees.*] No process fee is leviable on complaints made by Municipal officers, and the accused are not liable to refund sums illegally levied from the complainants as process fees. QUEEN-EMPRESS *v.* KHAJABHOY.

[I. L. R. 16 Mad. 423

——, s. 20, cl. 1.—*Rules under that section framed by the High Court in* 1878—*Process—Commission issued to Ameen to fix mesne profits.*] A commission issued to an Ameen to hold a local investigation for the purpose of ascertaining the amount of mesne profits is not a *process* within the meaning of cl. 1 of s. 20 of the Court-Fees Act; and Art. 3, Part II of the Rules, promulgated in 1878, framed under that section, is therefore *ultra vires*, and cannot be enforced. JAGAT KISHORE ACHARJEA CHOWDHRY *v.* DINA NATH CHUCKERBUTTY CHOWDHRY.

[I. L. R. 17 Calc. 281

——, s. 25.

See LIMITATION ACT, 1877, s. 4.

[I. L. R. 12 All. 129

——, s. 28.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES.

[I. L. R. 15 Mad. 29

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.

[I. L. R. 12 All. 57

See LIMITATION ACT, 1877, s. 4.

[I. L. R. 19 Calc. 747

[I. L. R. 15 All. 65

See LIMITATION ACT, 1877, s. 5.

[I. L. R. 12 All. 57

COURT-FEES ACT (VII OF 1870)—*contd.*

——, s. 28 and ss. 9, 10, 11.—*Civil Procedure Code*, 1882. *ss.* 54, 56—*Dismissal of suit—Rejection of plaint.*] When a memorandum of appeal which, when tendered, was insufficiently stamped has subsequently been sufficiently stamped, the affixing of the full stamps cannot have a retrospective effect so as to validate the original presentation, unless it has been done by order made under the second paragraph of s. 28 of the Court-Fees Act. In the case of a High Court, such an order can be made only by a Judge, and by him only in cases "of mistake or inadvertence." These words mean mistake or inadvertence on the part of the Court or its officers and not on the part of the appellant or his advisers The expression "head of the office" in s. 28 does not refer to the head of the office of a Court, or at all events to the head of the office of a High Court, acting not as such but as a taxing officer; but it refers to the head of a public office such as the Board of Revenue. Sections 9, 10 and 11 of the Court-Fees Act are not in conflict with s 28; nor are ss. 9, 10, 11 and 28, read together, in conflict with s. 54 of the Civil Procedure Code. Cases within s. 10 or s. 11 of the Act would arise only where, through mistake or inadvertence of the Court, a plaint which subsequently was discovered to be insufficiently stamped, had been received, filed or used in the Court; and clauses (*a*) and (*b*) of s. 54 of the Code are similarly related to s. 28 of the Act, and were not intended to cut down or limit its provisions. The "dismissal" of a suit under s. 10 or s. 11 of the Act has the same effect as that provided by s. 56 of the Code in the case of "rejection" of a plaint under s. 54. BALKARAN RAI *v.* GOBIND NATH TIWARI.

[I. L. R. 12 All. 129

——, s. 30.

See LIMITATION ACT, 1877, s. 4.

[I. L. R. 12 All. 129

——, s. 31.

See s. 19.

[I. L. R. 16 Mad. 423

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R. 20 Calc. 687

——, Sch. I, Art. 1.

See VALUATION OF SUITS—APPEALS.

[I. L. R. 19 Calc. 272

[I. L. R. 13 Mad. 508

[I. L. R. 16 Bom. 408

Sch. I, cl. 11.—*Ad valorem duty on probate—Parties married and holding property under the Code Napoleon—Law of France—Trust property.*] The deceased *F* was a European subject of the German Empire. He married a lady of Solingen in Rhenish Prussia, where the Code Napoleon is in force. There, in contemplation of the marriage, the parties entered into a contract whereby it was

COURT-FEES ACT (VII OF 1870), Sch. I, cl. 11—*concluded.*

provided that "there should be and rule, universal community of his and her present and future moveable and immoveable property," which contract placed the parties under the law of France respecting community of property between husband and wife. Under that law, a husband and wife have an equal interest in the property comprised in the community; on the death of either, the property is divided into two parts, of which one part goes to the survivor, and the other to the heirs or to donees under a testamentary disposition:—*Held*, that on the death of *F* only one-half of the property was chargeable with the *ad valorem* duty payable under Art. II of Sch. I of the Court-Fees Act; the other half being trust property, which should, under the provisions of section 19D of that Act, be exempted from payment of such duty. IN THE GOODS OF FROESCHMAN.

[I. L. R. 20 Calc. 575

——, Sch. II, Art. 1.

See CLAIM TO ATTACHED PROPERTY.

[I. L. R. 16 Bom. 700

See VALUATION OF SUIT—APPEALS.

[I. L. R. 16 Bom. 408

——, Sch. II, Art 17.

See VALUATION OF SUIT—APPEALS.

[I. L. R. 18 Calc. 667

[I. L. R. 13 Mad. 508

[I. L. R. 15 Mad. 288

See VALUATION OF SUIT—SUITS.

[I. L. R. 13 All. 389

COURT OF WARDS.

See BENGAL TENANCY ACT, s. 93.

[I. L. R. 20 Calc. 881

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[I. L. R. 18 Calc. 99

See LUNATIC.

[I. L. R. 14 Mad. 289

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 13 Mad. 197

COURT OF WARDS ACT (BENGAL ACT IX OF 1879.)

——, s. 20, and ss. 51—55.—"*Suit*"—*Application for execution by Collector on behalf of ward, when Manager of Ward's Estate has been appointed.*] The word "suit" as used in ss. 51 to 55 of Bengal Act IX of 1879 is not limited to what is usually called a "regular suit," but covers miscellaneous proceedings in a suit, such as an application for execution of a decree in which the

COURT OF WARDS ACT (BENGAL ACT IX OF 1879), s. 20—*concluded.*

ward for the first time seeks to have the carriage of litigation instituted by his predecessor in title. When it appeared that a Manager of a minor's property had been appointed by the Court of Wards under the provisions of s. 20 of Bengal Act IX of 1879, and during the absence of such Manager on leave an application was made on behalf of the minor by the Collector of the district for execution of a decree:—*Held*, that the office of Manager did not become vacant because the Manager obtained leave, and that if it were not vacant, s. 51 of the Act did not enable the Collector to appear on behalf of the minor. BHOOPENDRO NARAIN DUTT *v.* BARODA PROSAD ROY CHOWDHRY.

[I. L. R. 18 Calc. 500

——, s. 55.

See MAJORITY ACT, s. 3.

[I. L. R. 17 Bom. 944

——, s. 55—*Suit rejected when filed on behalf of a minor under the Court of Wards without sanction of that authority to proceed with it.*] Where, under s 55 of the Bengal Court of Wards Act (IX of 1879), the Manager of an estate authorised the plaintiff, in order to save limitation, to institute a suit on behalf of the Court of Wards, which refused afterwards to sanction the proceeding with the suit:—*Held*, that the Judge rightly ordered that the suit be rejected, as incapable, under the above section, of being prosecuted. BISESWAR ROY *v.* SHOSHI SIKAR ESWAR ROY.

[I. L. R. 17 Calc. 688
[L. R 17 I. A. 5

COUSINS.

See HINDU LAW — INHERITANCE — SPECIAL HEIRS—MALES — COUSINS.

[I. L. R. 17 Calc. 518
[I. L. R. 16 Bom. 716

COVENANT.

——, against assignment.

See COMPANY — WINDING UP—DUTIES AND POWERS OF LIQUIDATORS.

[I. L. R. 12 All. 193

——, Breach of.

See VENDOR AND PURCHASER—BREACH OF COVENANT.

[I. L. R. 15 Mad. 50

——, for title, waiver of.

See VENDOR AND PURCHASER—BREACH OF COVENANT.

[I. L. R. 15 Mad. 50

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[I. L. R. 13 Mad. 158

COVENANT—*concluded.*

—— in unregistered lease.

See REGISTRATION ACT, s. 49.

[I. L. R. 13 Mad. 313

——, Notice of.

See PRE-EMPTION — RIGHT OF PRE-EMPTION.

[I. L. R. 16 Mad. 301

——, Presumption of.

See RIGHT OF WAY.

[I. L. R. 17 Bom. 648

——, Suit on.

See REGISTRATION ACT, s. 49.

[I. L. R. 15 Mad. 253

CREDITOR.

See DEBTOR AND CREDITOR.

[I. L. R. 16 Bom. 1

CRIMINAL CASE.

See INSOLVENT ACT, s. 50.

[I. L. R. 19 Calc. 605

CRIMINAL FORCE.

See UNLAWFUL COMPULSION.

[I. L. R. 19 Calc. 572

CRIMINAL MISAPPROPRIATION.

See POST OFFICE ACT, s. 48.

[I. L. R. 14 Mad. 229

See THEFT.

[I. L. R. 17 Calc. 852

CRIMINAL PROCEEDINGS.

——, Effect of striking off.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—STRIKING OFF PROCEEDINGS.

[I. L. R. 20 Calc. 867

——, Institution of—

See FALSE CHARGE.

[I. L. R. 17 Calc. 574

1.—*Perjury or forgery committed in a Civil Suit—Stay of criminal proceedings pending Civil Suit—Sanction to prosecution.*] Criminal proceedings for perjury or forgery arising out of a civil litigation should not, as a rule, go on during the pendency of the litigation. IN RE NANA MAHARAJ.

[I. L. R. 16 Bom. 729

2.—*Irregularity in criminal trial—Scheduled District Act (XIV of 1874), ss. 1 to 7 and 11—Penal Code (Act XLV of 1860), ss. 1, 2—Criminal Procedure Code, s. 1—Laws Local Extent Act (XV of 1874), ss. 3, 4—Criminal Procedure in the Laccadive Islands.*] The Scheduled Districts Act having been extended to the Laccadive Islands, but no notifications having been made under

CRIMINAL PROCEEDINGS—*continued.*

that Act with regard to the criminal law to be administered there, the Penal Code and the Criminal Procedure Code are in force. Accordingly, where the Sub-Collector of Malabar, as such, tried and sentenced certain persons on one of the Laccadive Islands, not observing the procedure prescribed by the Criminal Procedure Code:—*Held*, that the proceedings were void and should be quashed. QUEEN-EMPRESS *v.* CHERIA KOYA.

[I. L. R. 13 Mad. 353

3.—*Irregularity in criminal trial — Prisoner charged with two offences, one of which was committed outside jurisdiction—Objection to jurisdiction taken before Magistrate and in Sessions Court—Criminal Procedure Code (X of 1882), ss. 531, 532.*] The accused was charged under s. 498 of the Penal Code (XLV of 1860) with having enticed away a married woman, and under s. 497 with having committed adultery. The woman alleged to have been enticed away resided in Bombay, but the alleged adultery took place at Khandala outside the jurisdiction. At the enquiry before the Magistrate in Bombay, objection was taken as to his jurisdiction with regard to the charge of adultery. The Magistrate, however, over-ruled the objections and committed the accused for trial. At the trial an application was made, on behalf of the accused, under s. 532 of the Criminal Procedure Code (X of 1882) that the commitment should be quashed and a fresh enquiry directed on the ground that an objection had been taken to the Magistrate's jurisdiction:—*Held*, refusing the application, that the commitment being an order (see *Queen-Empress* v. *Thaku*, I. L. R. 8 Bom. 312) under s. 531 of the Criminal Procedure Code, the commitment should not be quashed unless a failure of justice would be caused by proceeding with the trial. QUEEN-EMPRESS *v.* INGLE.

[I. L. R. 16 Bom. 200

4.—*Irregularity in criminal trial—Criminal Procedure Code, s. 192—Transfer of criminal case—Case transferred after the evidence for the prosecution has been recorded and heard by different Magistrate on that evidence.*] A Magistrate to whose Court a case under s. 355 of the Penal Code had been transferred at a stage when all the evidence for the prosecution had been taken, did not re-summon the witnesses for the prosecution, but proceeded to act on their evidence as if it had been taken before himself:—*Held*, that whether such procedure amounted to an irregularity or illegality or not, it was sufficiently prejudicial to the accused to warrant the conviction being quashed. QUEEN-EMPRESS *v.* BASHIR KHAN.

[I. L. R. 14 All. 346

See QUEEN-EMPRESS *v.* RADHE.

[I. L. R. 12 All. 66

5.—*Criminal Procedure Code, ss. 268, 428, 537—Material irregularity—Assessors, statement of deceased person not proved in presence of.*] Where in a trial for murder held with assessors the Court relied on a statement made by the deceased, and the evidence necessary to prove such statement was not recorded until after the close of the trial and the discharge of the assessors:—*Held*, that this amounted to a material irregularity which was not covered by s. 537 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* RAM LAL.

[I. L. R. 15 All. 136

CRIMINAL PROCEEDINGS—*concluded.*

6.—*Irregularity prejudicing the accused—Rioting, counter charges of—Cross-cases tried together—Evidence in one case considered in the other—Criminal Procedure Code (Act X of 1882), ss. 233, 239, 537—Illegality—Fight between two parties not "transaction"—Joinder of charges.*"] Where two cross-cases of rioting and grievous hurt were committed separately for trial before a Sessions Judge, who, having heard the evidence in the first case, heard the evidence in the second case, examined some of the accused in the one case as witnesses for the prosecution in the other and *vice versâ*, and subsequently heard the arguments in both the cases together, and the opinions of the assessors (who were the same in both the cases) were taken at one time, and both the cases were dealt with in one judgment:—*Held*, that this mode of trial, although irregular, did not prejudice the accused in their defence, and that, under such circumstances, a re-trial was not made necessary by reason of such irregularity. *Queen* v. *Bazu*, B. L. R. Sup. Vol. 750: 8 W. R. Cr. 47; and *Queen v. Surroop Chunder Paul*, 12 W. R. Cr. 75, approved. Nor did the examination of the accused who were on their trial in one case as witnesses for the prosecution in the other affect the validity of their conviction. Observations in *Bachu Mullah* v. *Sia Ram Singh*, I. L. R. 14 Calc. 358, dissented from. *Hussein Buksh* v. *The Empress*, I. L. R. 6 Calc. 96, considered and distinguished. *Semble.*—A fight between two parties cannot be treated as a 'transaction' within the meaning of s. 239 of the Code of Criminal Procedure. On the law as contained in that section, the two parties cannot regularly be charged in the same trial. QUEEN-EMPRESS *v.* CHANDRA BHUIYA.

[I. L. R. 20 Calc. 537

CRIMINAL PROCEDURE CODE (ACT XXV OF 1861).

——, s. 6.

See FINE.

[I. L. R. 20 Calc. 478

CRIMINAL PROCEDURE CODE (ACT X OF 1882.)

——, s. 1.

See CRIMINAL PROCEEDINGS.

[I. L. R. 13 Mad. 353

See MUNSIF, JURISDICTION OF.

[I. L. R. 15 Mad. 131

——, s. 2.

See HIGH COURT, JURISDICTION OF—HIGH COURT, MADRAS—CRIMINAL.

[I. L. R. 14 Mad. 121

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 4.

See REFORMATORY SCHOOLS ACT.

[I. L. R. 14 Bom. 381

——, s. 15,

See BENCH OF MAGISTRATES.

[I. L. R. 16 Mad. 410

——, s. 16.

See BENCH OF MAGISTRATES.

[I. L. R. 16 Mad. 410

[I. L. R. 20 Calc. 870

——, s. 17.

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.

[I. L. R. 14 Mad. 399

——, s. 32.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT.

[I. L. R. 20 Calc. 676

——, s. 40.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING TRIAL.

[I. L. R. 15 Mad. 132

——, s. 45,

See INFORMATION OF COMMISSION OF OFFENCE.

[I. L. R. 20 Calc. 316

——, s. 55.

See ARREST—CRIMINAL ARREST.

[I. L. R. 14 All. 45

——, ss. 69, 71.

See PENAL CODE, s. 173.

[I. L. R. 20 Calc. 358

See PENAL CODE, s. 180.

[I. L. R. 20 Calc. 358

——, s. 94.

See INSPECTION OF DOCUMENTS—CRIMINAL CASES.

[I. L. R. 19 Calc. 52

——, s. 96.

See WARRANT.

[I. L. R. 13 Mad. 18

——, s. 107.

See RECOGNIZANCE TO KEEP PEACE.

[I. L. R. 14 All. 49

——, s. 110.

See COMPENSATION—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[I. L. R. 15 All. 365

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 118.

See SECURITY FOR GOOD BEHAVIOUR.

[I. L. R. 16 Bom. 372

——, s. 133.

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURTS.

[I. L. R. 17 Bom. 293

See JURISDICTION OF CIVIL COURT—MAGISTRATE'S ORDERS, INTERFERENCE WITH.

[I. L. R. 17 Bom. 293

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[I. L. R. 17 Calc. 562

See PENAL CODE, s. 188.

[I. L. R. 13 All. 577

——, s. 140.

See PENAL CODE, s. 188.

[I. L. R. 13 All. 377

——, s. 144.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[I. L. R. 19 Calc. 127

[I. L. R. 14 Bom. 165

——, s. 145.

See s. 437.

[I. L. R. 20 Calc. 729

——, s. 145.

See LIMITATION ACT, 1877, ART. 47.

[I. L. R. 19 Calc. 646

See CASES UNDER POSSESSION, ORDER OF CRIMINAL COURT AS TO.

——, s. 146.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—ATTACHMENT OF PROPERTY.

[I. L. R. 15 All. 394

——, s. 161.

See EVIDENCE — CRIMINAL CASES — STATEMENTS TO POLICE-OFFICERS.

[I. L. R. 20 Calc. 642

[I. L. R. 15 All. 11, 25

See FALSE EVIDENCE.

[I. L. R. 15 All. 11

——, s. 162.

See EVIDENCE — CRIMINAL CASES — STATEMENTS TO POLICE-OFFICERS.

[I. L. R. 15 All. 25

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

———, s. 164.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[I. L. R. 17 Calc. 826
[I. L. R. 18 Calc. 549

See FALSE EVIDENCE.

[I. L. R. 16 Mad. 421

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R. 16 Mad. 421

———, s. 172.

See EVIDENCE — CRIMINAL CASES — STATEMENTS TO POLICE-OFFICERS.

[I. L. R. 20 Calc. 642

———, s. 188.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[I. L. R. 13 Mad. 423

See JURISDICTION OF CRIMINAL COURTS —NATIVE INDIAN SUBJECTS.

[I. L. R. 16 Bom. 178

———, s. 191.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R. 13 All. 345

———, s. 192.

See s. 350.

[I. L. R. 12 All. 66

See CRIMINAL PROCEEDINGS.

[I. L. R. 14 All. 346

———, s. 193.

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R. 15 Mad. 352

———, s. 195.

See s. 487.

[I. L. R. 14 All. 354

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R. 15 All. 61

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R. 15 Mad. 131

See MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.

[I. L. R. 16 Mad. 461

See REVISION — CRIMINAL CASES —MISCELLANEOUS CASES.

[I. L. R. 20 Calc. 349

See CASES UNDER SANCTION TO PROSECUTION.

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

———, s. 197.

See REFERENCE TO HIGH COURT — CRIMINAL CASES.

[I. L. R. 15 Mad. 36

See SANCTION TO PROSECUTION — NATURE, FORM AND SUFFICIENCY OF SANCTION.

[I. L. R. 16 Mad. 468

———, s. 199.

See s. 238.

[I. L. R. 20 Calc. 483

———, ss. 204, 205.

See PARDANASHIN WOMEN.

[I. L. R. 21 Calc. 588

———, ss. 222, 223.

See CHARGE—FORM OF CHARGE.

[I. L. R. 15 Bom. 491

———, s. 226.

See CHARGE — ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 12 All. 551

———, s. 227.

See CHARGE — ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 12 All. 55
[I. L. R. 17 Bom. 369

———, s. 233.

See CRIMINAL PROCEEDINGS.

[I. L. R. 20 Calc. 537

See JOINDER OF CHARGES.

[I. L. R. 14 All. 502
[I. L. R. 20 Calc. 413

———, s. 234.

See JOINDER OF CHARGES.

[I. L. R. 14 All. 502
[I. L. R. 20 Calc. 413

———, s. 235.

See JOINDER OF CHARGES.

[I. L. R. 20 Calc. 413
[I. L. R. 15 Bom. 491

———, s. 238.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 17 Bom. 369

———, s. 238 and s. 199.—*Penal Code (Act of XLV* 1860), *ss.* 366, 498—*Cognizance of offence by Court—Enticing away married woman—Conviction for minor offence where evidence is insufficient for grave offence.*] The complainant charged the accused with an offence under s. 366 of the Penal

CRIMINAL PROCEDURE CODE (ACT X OF 1882), s. 238—*continued.*

Code in respect of his wife. The Deputy Magistrate convicted the accused of an offence under s. 498 of the Penal Code, and sentenced him to one month's rigorous imprisonment. The Sessions Judge being of opinion that the Deputy Magistrate had no jurisdiction to convict the accused under s. 498, there being no complaint by the husband under s. 199 of the Criminal Procedure Code, and that the offence did not fall under s. 238 of the Criminal Procedure Code, referred the case to the High Court:—*Held*, that such a case is within the intention of s. 238. The intention of the law is to prevent Magistrates inquiring of their own motion into cases connected with marriage unless the husband or other person authorized moves them to do so. But when the husband is complainant and brings his complaint under s. 366, a conviction under s. 498 may properly be had if the evidence be such as to justify a conviction for the minor offence, and yet insufficient for a conviction for the graver one. JATRA SHEKH *v.* REAZAT SHEKH.

[I. L. R. 20 Calc. 483

———, s. 239.

See CRIMINAL PROCEEDINGS.

[I. L. R. 20 Calc. 537

See JOINDER OF CHARGES.

[I. L. R. 15 Bom. 491

———, s. 250.

See COMPENSATION—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[I. L. R. 20 Calc. 481

———, s. 257.

See WITNESS—EXAMINATION OF WITNESSES—CROSS-EXAMINATION.

[I. L. R. 20 Calc. 469

———, s. 260.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R. 15 Mad. 83

———, s. 261.

See BENCH OF MAGISTRATES.

[I. L. R. 13 Mad. 142

———, ss. 262, 263.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R. 15 Mad. 83

———, s. 268.

See ASSESSORS.

[I. L. R. 15 Bom. 514
[I. L. R. 13 All. 337

See CRIMINAL PROCEEDINGS.

[I. L. R. 15 All. 136

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

———, s. 272.

See ASSESSORS.

[I. L. R. 15 Bom. 514

———, s. 273.

See PENAL CODE, s. 372.

[I. L. R. 21 Calc. 97

———, s. 284.

See ASSESSORS.

[I. L. R. 15 Bom. 514

———, s. 285.

See ASSESSORS.

[I. L. R. 15 Bom. 514
[I. L. R. 13 All. 337

———, s. 287.

See EVIDENCE—CRIMINAL CASES—EXAMINATION AND STATEMENTS OF ACCUSED.

[I. L. R. 15 Mad. 352

———, s. 288.

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R. 15 Mad. 352

———, s. 289.

See RIGHT OF REPLY.

[I. L. R. 17 Calc. 930
[I. L. R. 14 All. 212

———, s. 289.—*Meaning of words "no evidence" in section.*] The words "no evidence" in the 2nd and 3rd clauses of s. 289 of the Code of Criminal Procedure (Act X of 1882) must not be read as meaning "no satisfatory, trustworthy or conclusive evidence." If there is evidence, the trial must go on to its close, when in trials by jury, the jury, and in other trials the Judge after considering the opinions of the assessors, have to find on the facts. It is only in the absence of any evidence as to the commission of the offence by the accused that the Court can record an acquittal without allowing the trial to go on, or obtaining the opinion of the assessors, or that the Court can direct the jury, without going into the defence, to return a verdict of not guilty. *Queen-Empress* v. *Munna Lal*, I. L. R. 10 All. 414, approved. QUEEN-EMPRESS *v.* VAJIRAM.

[I. L. R. 16 Bom. 414

———, s. 292.

See RIGHT OF REPLY.

[I. L. R. 14 Bom. 436
[I. L. R. 14 All. 212

———, s. 307.

See REFERENCE TO HIGH COURT—CRIMINAL CASES.

[I. L. R. 13 Mad. 343

CRIMINAL PROCEDURE CODE (ACT X OF 1882), s. 307—*continued.*

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R. 14 Mad. 36
[I. L. R. 15 Bom. 452

——, s. 337.

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 17 Calc. 642

See PARDON.

[I. L. R. 14 All. 336

——, s. 338.

See APPROVERS.

[I. L. R. 14 All. 502

——, s. 339.

See APPROVERS.

[I. L. R. 15 Mad. 352
[I. L. R. 14 All. 502

——, s. 342.

See WITNESS—CRIMINAL CASES—PERSON COMPETENT TO BE WITNESS.

[I. L. R. 16 Bom. 661

1.—s. 342.—*Meaning of "accused."*] By the word accused in s. 342 of the Code of Criminal Procedure (Act X of 1882) is meant a person over whom the Magistrate or other Court is exercising jurisdiction. QUEEN-EMPRESS *v.* MONA PUNA.

[I. L. R. 16 Bom. 661

2.—s. 342.—*Examination of accused person—Power of Magistrate to question the accused.*] Where a Magistrate, before evidence taken for the prosecution, put questions to the accused of the nature of a cross-examination, such procedure was illegal, as it could not be said that the questions were put "for the purpose of enabling the accused to explain any circumstances appearing against him in the evidence" within the meaning of s. 342 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* HAWTHORNE.

[I. L. R. 13 All. 345

3.—s. 342.—*Sessions trial—Accused person, examination of.*] Questions put by the Court to an accused person under the provisions of s. 342 of the Code of Criminal Procedure, 1882, must be strictly limited to the purpose described in that section, *i.e.*, "of enabling the accused to explain any circumstances appearing in the evidence against him." The evidence referred to in that section is the evidence already given at the trial at the time when the Court puts questions to the accused. QUEEN-EMPRESS *v.* HARGOBIND SINGH.

[I. L. R. 14 All. 242

——, s. 345.

See COMPOUNDING OFFENCE.

[I. L. R. 21 Calc. 103

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 350.

See BENCH OF MAGISTRATES.

[I. L. R. 20 Calc. 870

—— s. 350, and ss. 182 and 349.—*Transfer of case by Subordinate Magistrate to District Magistrate—District Magistrate deciding on evidence taken by Subordinate—Magistrate, jurisdiction of.*] S. 350 of the Criminal Procedure Code was intended to provide for a case where an inquiry or trial has been commenced before one incumbent of a particular magisterial post, and that officer ceases to have jurisdiction in that post, and is succeeded by another officer. A Subordinate Magistrate, having taken all the evidence for the prosecution and for the defence, sent the case to the Magistrate of the District, not on the grounds mentioned in s. 349 of the Criminal Procedure Code, and the District Magistrate, observing that none of the accused asked to have the witnesses re-heard, gave judgment upon the evidence taken by the Subordinate Magistrate. The Sessions Judge refused to interfere in revision with the District Magistrate's proceedings, on the ground that they were covered by s. 350 of the Code:—*Held*, that this view was erroneous, that neither under s. 192 nor under s. 349 was there any transfer to the District Magistrate by his subordinate, that s. 350 was inapplicable, and that the order passed by the District Magistrate must be quashed. QUEEN-EMPRESS *v.* RADHE.

[I. L. R. 12 All. 66

See QUEEN-EMPRESS *v.* BASHIR KHAN.

[I. L. R. 14 All. 346

——, s. 355.

See MAINTENANCE, ORDER OF CRIMINAL COURT FOR.

[I. L. R. 20 Calc. 361

——, s. 364.

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 17 Calc. 642

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[I. L. R. 17 Calc. 862
[I. L. R. 18 Calc. 549

——, s. 366.

See JUDGMENT—CRIMINAL CASES.

[I. L. R. 21 Calc. 121

See SENTENCE—GENERAL CASES.

[I. L. R. 14 Calc. 242

——, s. 367.

See JUDGMENT—CRIMINAL CASES.

[I. L. R. 15 Bom. 11
[I. L. R. 20 Calc. 353
[I. L. R. 21 Calc. 92, 121

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 367.

See SENTENCE—GENERAL CASES.

[I. L. R. 14 All. 242

See FINE.

[I. L. R. 20 Calc. 478

——, s. 404.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R. 14 Bom. 160

——, s. 413.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R. 20 Calc. 687

——, s. 417.

See APPEAL IN CRIMINAL CASES — ACQUITTALS, APPEALS FROM.

[I. L. R. 17 Calc. 485

[I. L. R. 16 Bom. 414

——, s. 418.

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R. 14 Mad. 36

——, s. 419.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R. 15 Mad. 137

——, s. 420.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R. 13 All. 171

——, s. 421.

See JUDGMENT—CRIMINAL CASES.

[I. L. R. 21 Calc. 92

——, ss. 421, 422.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R. 13 All. 171

——, s. 423.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R. 13 All. 171

See COMMITMENT.

[I. L. R. 15 All. 205

See REVISION—CRIMIMAL CASES — COMMITMENT.

[I. L. R. 16 Bom. 580

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R. 20 Calc. 633

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 424.

See JUDGMENT—CRIMINAL CASES.

[I. L. R. 15 Bom. 11

——, s. 428.

See CRIMINAL PROCEEDINGS.

[I. L. R. 15 All. 136

——, s. 429.

See LETTERS PATENT, HIGH COURT, CL. 36.

[I. L. R. 15 Bom. 452

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R. 15 Bom. 452

——, s. 432.

See RIGHT TO BEGIN.

[I. L. R. 19 Calc. 380

——, s. 435.

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 53.

[I. L. R. 15 Bom. 180

See REFORMATORY SCHOOLS ACT.

[I. L. R. 14 Bom. 381

See REVISION—CRIMINAL CASES—ACQUITTALS.

[I. L. R. 14 Mad. 383

See REVISION—CRIMINAL CASES—QUESTION OF FACT.

[I. L. R. 14 Bom. 331

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R. 20 Calc. 633

——, s. 436.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R. 18 Calc. 75

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R. 20 Calc. 633

——, 437.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R. 18 Calc. 75

1.—s. 437.—"*Further enquiry*"—*Sessions Judge, jurisdiction of.*] It is competent to a Sessions Judge acting under the Criminal Procedure Code, s. 437, to direct further enquiry to be held where additional evidence is not forthcoming. QUEEN-EMPRESS *v.* BALASINNATAMBI.

[I. L. R. 14 Mad. 334

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

2.—s. 437.—*Further enquiry—Power of District Magistrate to suggest a committal.*] A District Magistrate who refers a case to a Sub-Magistrate for further enquiry has no authority to fetter him in the exercise of his judicial discretion as to the question whether the case should or should not be committed to the Court of Sessions. QUEEN-EMPRESS *v.* MUNISAMI.

[I. L. R. 15 Mad. 39

3.—s. 437.—*Order of Sessions Judge rejecting application under s. 437—Subsequent order of District Magistrate granting similar application—Practice.*] Where a Sessions Judge has passed orders under s. 437 of the Criminal Procedure Code, a District Magistrate acting under the same section should not pass orders of a contrary kind, but if he thinks that the Judge's orders were wrong, he should submit them to the High Court through the medium of the Public Prosecutor. *Queen-Empress* v. *Shere Singh*, I. L. R. 9 All. 362, referred to. Where a Sessions Judge had, under s. 437 of the Criminal Procedure Code, refused to order further enquiry into the case of an accused person who had been discharged, the High Court set aside a subsequent order of the Magistrate of the district passed under the same section and ordering further enquiry into the same case. QUEEN-EMPRESS *v.* PIRTHI.

[I. L. R. 12 All. 434

4.—s. 437 and s. 145.—"*Complaint*"—*District Magistrate, power of, to order further enquiry—Dispute concerning land.*] S. 437 of the Code of Criminal Procedure does not give power to order a further enquiry in a case under s. 145 of that Code. CHATHU RAI *v.* NIRANJAN RAI.

[I. L. R. 20 Calc. 729

——, s. 439.

See COMMITMENT.

[I. L. R. 15 All. 205

See REVISION — CRIMINAL CASES — ACQUITTALS.

[I. L. R. 14 Mad. 363
[I. L. R. 15 Bom. 349

See REVISION—CRIMINAL CASES—COMMITMENTS.

[I. L. R. 16 Bom. 580

See REVISION—CRIMINAL CASES—QUESTION OF FACT.

[I. L. R. 14 Bom. 331

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R. 20 Calc. 633

——, s. 440.

See REVISION — CRIMINAL CASES — ACQUITTALS.

[I. L. R. 14 Mad. 363

——, s. 452.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R. 14 Bom. 160

——, s. 454.

See MAGISTRATE, JURISDICTION OF — POWERS OF MAGISTRATES.

[I. L. R. 16 Mad. 308

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

——, s. 476.

See MAGISTRATE, JURISDICTION OF—REFERENCE BY OTHER MAGISTRATES.

[I. L. R. 16 Mad. 461

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R. 20 Calc. 349

See CASES UNDER SANCTION TO PROSECUTION.

——, s. 477.

See CONTEMPT OF COURT—PENAL CODE, s. 175.

[I. L. R. 12 Mad. 24

——, s. 478.

See SANCTION TO PROSECUTION—DISCRETION IN GRANTING SANCTION.

[I. L. R. 15 Mad 224

——, s. 480.

See CONTEMPT OF COURT—PENAL CODE, s. 175.

[I. L. R. 13 Mad. 24

See MUNSIF, JURISDICTION OF.

[I. L. R. 15 Mad. 131

——, ss. 481, 482.

See MUNSIF, JURISDICTION OF.

[I. L. R. 15 Mad. 131

——, s. 485.

See CONTEMPT OF COURT—PENAL CODE, s. 175.

[I. L. R. 13 Mad. 24

——, s. 487.

See CONTEMPT OF COURT—PENAL CODE, s. 175.

[I. L. R. 13 Mad. 24

——, s. 487 and s. 195.—*Penal Code (Act XLV of* 1860), *s.* 193—*False evidence, Sanction for prosecution for—Jurisdiction of Sessions Judge.*] A Sessions Judge who has directed the trial of a person for the offence of giving false evidence committed in the course of a judicial proceeding of a criminal nature before him cannot try the case himself. *Empress* v. *Ganga Din*, Weekly Notes, 1884, p. 329, distinguished. QUEEN-EMPRESS *v.* MAKHDUM.

[I. L. R. 14 All. 354

——, s. 488.

See CASES UNDER MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

——, s. 489.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[I. L. R. 14 Mad. 398

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*continued.*

———, s. 490.

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[I. L. R. 15 All. 143

———, s. 491.

See CUSTODY OF CHILD.

[I. L. R. 16 Bom. 307

See LETTERS PATENT, HIGH COURT, CL. 15.

[I. L. R. 14 Bom. 555

———, s. 503.

See COMMISSION—CRIMINAL CASES.

[I L. R. 19 Calc 113

———, s. 507.

See COMMISSION—CRIMINAL CASES.

[I. L. R. 19 Calc. 113

———, s. 509.

See EVIDENCE — CRIMINAL CASES — DEPOSITIONS.

[I. L. R. 18 Calc. 129

———, s. 517.

See s. 523.

[I. L. R. 17 Bom. 748

———, s. 523 and s. 517.—*Property seized by the police pending an inquiry or trial under a search-warrant issued by the Court—Magistrate's power to deal with such property where no offence is committed.*] S. 523 of the Code of Criminal Procedure (Act X of 1882) does not apply to property which is produced before a Court in the course of an inquiry or trial under a search-warrant issued by itself under s. 96 of the Code. To such property s. 517 alone would apply; and if no offence is found in respect thereof, the Court can make no order. The property must be given back into the possession from which it came. The scope of s. 523 must be confined to property seized by the Police of their own motion in the exercise of the powers conferred on them by law, for instance under s. 51, 54, 164 or 165 of the Code of Criminal Procedure. *Per* TELANG, J.:—Under s. 523 of the Code of Criminal Procedure, a Magistrate is bound to institute an inquiry before making any order touching the right, not of property, but of possession to the property, seized by the Police. IN RE RATANLAL RANGILDAS.

[I. L. R. 17 Bom. 748

———, s. 526.

See TRANSFER OF CRIMINAL CASE.

[I. L. R. 18 Calc. 247

———, s. 528.

See MAGISTRATE, JURISDICTION OF — WITHDRAWAL OF CASES.

[I. L. R. 14 Mad. 399

[I. L. R. 15 Mad. 94

CRIMINAL PROCEDURE CODE (ACT X OF 1882)—*concluded.*

———, s. 531.

See CRIMINAL PROCEEDINGS.

[I. L. R. 16 Bom. 200

———, s. 532.

See CRIMINAL PROCEEDINGS.

[I. L. R. 16 Bom. 200

———, s. 533.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[I. L. R. 17 Calc. 862

[I. L. R. 18 Calc. 549

———, s. 537.

See CASES UNDER CRIMINAL PROCEEDINGS.

See JOINDER OF CHARGES.

[I. L. R. 14 All. 502

[I. L. R. 20 Calc. 413

See JUDGMENT—CRIMINAL CASES.

[I. L. R. 20 Calc. 353

[I. L. R. 21 Calc. 121

See POSSESSION, ORDER OF CRIMINAL COURT AS TO — LIKELIHOOD OF BREACH OF THE PEACE.

[I. L. R. 20 Calc. 520

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—PARTIES TO PROCEEDINGS.

[I. L. R. 21 Calc. 404

———, s. 540.—*Order of examination of witnesses.*] It is not intended by s. 540 of the Code of Criminal Procedure, 1882, that a Judge shall reverse the order of a Sessions trial and call the witnesses summoned for the defence before the case for the prosecution is closed. QUEEN-EMPRESS *v.* HARGOBIND SINGH.

[I. L. R. 14 All. 242

———, s. 555.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION.

[I. L. R. 15 Mad. 83

[I. L. R. 14 Bom. 572

[I. L. R. 15 All. 192

[I. L. R. 20 Calc. 857

———, s. 560.

See COMPENSATION—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[I. L. R. 15 All. 365

[I. L. R. 20 Calc. 481

CRIMINAL PROCEDURE CODE AMENDMENT ACT (IV OF 1891), s. 2.

See COMPENSATION—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[I. L. R. 20 Calc. 481

CROPS.

——, Standing crops—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.

[I. L. R. 14 All. 30

See POSSESSION, ORDER OF CRIMINAL COURT AS TO — CASES WHICH MAGISTRATE MAY DECIDE AS TO POSSESSION.

[I. L. R. 15 All. 394

See SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHTS OF—EMBLEMENTS.

[I. L. R. 13 Mad. 15

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CROPS.

[I. L. R. 14 All. 30

[I. L. R. 21 Calc. 430

CROSS-APPEALS SEPARATELY HEARD.

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 12 All. 578

CROSS-CASES TRIED TOGETHER.

See CRIMINAL PROCEEDINGS.

[I. L. R. 20 Calc. 537

CROSS-DECREES.

See SET-OFF—CROSS-DECREES.

[I. L. R. 14 All. 339

CROSS-EXAMINATION.

See WITNESS—CRIMINAL CASES—CROSS-EXAMINATION.

[I. L. R. 20 Calc. 469

[I. L. R. 21 Calc. 401

CROWN.

——, Applicability of Act to.

See ENGLISH LAW.

[I. L. R. 14 Bom. 213

See LIMITATION ACT, 1877, s. 26.

[I. L. R. 14 Bom. 213

——, Prerogative right of.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.

[I. L. R. 15 Bom. 155

CRUELTY.

See HINDU LAW—HUSBAND AND WIFE.

[I. L. R. 13 All. 126

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIFE.

[I. L. R. 19 Calc. 84

CULPABLE HOMICIDE.

See HURT—GRIEVOUS HURT,

[I. L. R. 18 Calc. 49

Penal Code, s. 300, *cl.* 5, *and ss.* 149 *and* 307—*Murder, attempt to commit—Rioting armed with deadly weapons—Pre-arranged fight.*] In a case in which it was found that all the accused were guilty of rioting armed with deadly weapons, that the fight was premeditated and pre-arranged, a regular pitched battle or trial of strength between the two parties concerned in the riot, and that one of the accused in the course of the riot, and in prosecution of the common object of the assembly, killed or attempted to kill a man under such circumstances that his act amounted to an attempt to murder, the question arose whether that act could be said to bear a less grave character by reason of exception 5 to s. 300 of the Indian Penal Code. *Per curiam, held*, that upon such finding the case did not fall within the exception. *Per* PIGOT, J. (PETHERAM, C. J., and MACPHERSON, J., concurring)—The 5th exception to s. 300 should receive a strict and not a liberal construction; and in applying the exception it should be considered with reference to the act consented to or authorised, and next with reference to the person or persons authorised, and as to each of those some degree of particularity at least should appear upon the facts proved before the exception can be said to apply. *Shamshere Khan* v. *Empress*, I. L. R. 6 Calc. 154, and *Queen* v. *Kukier Mather*, unreported, dissented from, so far as they decide that from such a finding as the above consent to take the risk of death is inferred. *Per* O'KINEALY, J.—Before exception 5 can be applied, it must be found that the person killed, with a full knowledge of the facts determined to suffer death, or take the risk of death; and that this determination continued up to, and existed at, the moment of his death. *Queen* v. *Kukier Mather*, unreported, observed on. *Per* GHOSE, J.—No general rule of law can be laid down in determining in cases of this description whether the person killed or wounded suffered death or took the risk of death with his own consent, it being a question of fact, and not of law, to be decided upon the circumstances of each case as it arises. *Shamshere Khan* v. *Empress*, I. L. R. 6 Calc. 154, and *Queen* v. *Kukier Mather*, unreported, observed on, and the propositions of law laid down therein concurred with. QUEEN-EMPRESS v. NAYAMUDDIN.

[I. L. R. 18 Calc. 484

CULTIVATOR.

See STAMP ACT, 1879, SCH. II, ART. 13.

[I. L. R. 15 Bom. 7

CUSTODY OF CHILD.

See LETTERS PATENT, HIGH COURT, CL. 15.

[I. L. R. 14 Bom. 555

See MINOR—CUSTODY OF MINORS.

[I. L. R. 12 All. 213

1.—*Practice—Custody of child, application for—Notice of application—Divorce Act (IV of 1869), s. 42.*] A petition for judicial separation by a wife contained a statement in the body thereof to the effect that the petitioner was desirous of having the custody of a child born of the marriage, but contained no prayer to that effect. The respondent appeared and filed an answer to the petition, in which he expressly noticed that portion of the petition. Pending the hearing of the petition, an application was made by the petitioner for the custody of the child *pendente lite*, which was opposed by the respondent and refused. After decree made for judicial separation, the respondent not appearing at the hearing, an application was made by the petitioner, under the provisions of s. 42 of the Act, for the custody of the child. No notice of such application was given to the respondent:—*Held*, that it was the more correct procedure having regard to the provisions of s. 42, not to include a prayer for the custody in the original petition, and that following the decision in *Horne* v. *Horne*, 30 L. J. P. and M. 200, and *Wilkinson* v. *Wilkinson*, 30 L. J. P. and M. 200 note, it was unnecessary under the circumstances to give further notice of the application to the respondent. *Held*, further, on the merits, that the petitioner was entitled to the order asked for. LEDLIE *v.* LEDLIE.

[I. L. R. 18 Calc. 473

2.—*Change of religion—Education and prospects of minor—Conduct of natural guardian—Guardians and Wards Act (VIII of 1890)—Habeas Corpus—Criminal Procedure Code, s. 491.*] *S*, a girl fifteen years of age, had, for the last eight years, with her mother the petitioner's consent, been boarded and educated first at the American Marathi Mission School and then at the Methodist Zenana Mission School, of which latter school the respondent was the superintendent. The petitioner, during that time, had never contributed anything towards the expenses of her daughter's board and education, and was quite unable to do so, being a servant in receipt of a salary of only 8 annas a month, and with no home of her own. *S*, in the meantime, had become a Christian and assumed the name of Sarah Hattie Houghton, and would soon be in a position, if allowed to complete her education as she herself desired to do, to earn her own livelihood by teaching. The petitioner now applied, under s. 491 of the Criminal Procedure Code, X of 1882, for an order on the respondent to show cause why *S* should not be delivered over to the custody of her mother, the petitioner:—*Held*, that even assuming that *S*, not being sixteen years of age, was too young, according to the authorities, to be able to decide for herself where she would reside, it was the duty of the Court to refuse the

CUSTODY OF CHILD—*concluded.*

present application, the Court not being satisfied that the application was made *bonâ fide* by the petitioner, and the petitioner being a servant, earning only 8 annas a month as wages, a pauper, and having no home of her own. *Held*, further, that according to the doctrine governing Courts of Equity in such cases, the petitioner by her conduct during the last eight years had precluded herself from demanding that her child should now be given up to her, to do which would, under the circumstances, be manifestly most detrimental to the welfare of the child herself. The true principle deducible from the authorities by which the Court should be guided in such cases is that the Court is to judge upon the circumstances of each particular case, and that the welfare of the infant, irrespective of its age, is the main feature to be regarded. *Semble*—A boy of fourteen and a girl of sixteen have a right to choose their own residence. The provisions of the Guardians and Wards Act VIII of 1890 and the cases on the subject in the English and Indian Courts considered. IN THE MATTER OF SAITHRI. JAINOO *v.* ABRAMS.

[I. L. R. 16 Bom. 307

CUSTOM.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[I. L. R. 17 Bom. 129

See ENGLISH LAW.

[I. L. R. 14 Bom. 213

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT.

[I. L. R. 17 Bom. 475

See EVIDENCE — CIVIL CASES — MISCELLANEOUS DOCUMENTS—WAJIBUL-ARZ.

[I. L. R. 15 All. 147

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[I. L. R. 17 Bom. 129

See HINDU LAW—ADOPTION—WHO MAY ADOPT.

[I. L. R. 15 Bom. 565

See CASES UNDER HINDU LAW—CUSTOM.

See HINDU LAW—PARTITION—PROPERTY LIABLE TO PARTITION.

[I. L. R. 15 Bom. 519

See HUSBAND AND WIFE.

[I. L. R. 16 Bom. 630

See LANDLORD AND TENANT—NATURE OF TENANCY.

[I. L. R. 15 Bom. 647
[I. L. R. 17 Bom. 475

CUSTOM—*concluded.*

See LIEN.

[I. L. R. 18 Calc. 573

See LIMITATION ACT, 1877, s. 26.

[I. L. R. 14 Bom. 213

See MAHOMEDAN LAW—CUSTOM.

[I. L. R. 18 Calc. 418

See MAHOMEDAN LAW—DOWER.

[I. L. R. 19 Calc. 689

See MALABAR LAW—CUSTOM.

[I. L. R. 13 Mad. 209

[I. L. R. 15 Mad. 60

See MALABAR LAW—JOINT-FAMILY.

[I. L. R. 15 Mad. 19

See OUDE ESTATES ACT, s. 8.

[I. L. R. 20 Calc. 649

See PARTITION—PRIVATE PARTITION.

[I. L. R. 20 Calc. 45

See PRE-EMPTION — CONSTRUCTION OF WAJIBULARZ.

[I. L. R. 13 All. 373, 407

——, Evidence of—

See EVIDENCE ACT, s. 32.

[I. L. R. 15 Bom. 565

See HINDU LAW — ENDOWMENT—SUCCESSION IN MANAGEMENT.

[I. L. R. 13 Mad. 524

Custom of trade—Notoriety and definiteness of custom — Requirements of a binding custom of trade.] Suit for damages for breach of a contract to let horses on hire. The plaintiff hired a pair of horses at Ootacamund from the defendant for a period of six months, and on one occasion drove them beyond the Municipal limits of the station; on their return the defendant took away the horses from the plaintiff, which was the breach complained of. The defendant pleaded that the plaintiff's use of the horses as above was contrary to the local custom of the trade:—*Held*, that since the alleged custom was not shown to be either certain or invariable or so notorious that persons should be held to enter into agreements with reference to it, it formed no defence to the action. PRICE *v.* BROWNE.

[I. L. R. 14 Mad. 420

CUTCHI MEMONS.

See HINDU LAW—JOINT-FAMILY—DEBTS AND JOINT-FAMILY BUSINESS.

[I. L. R. 14 Bom. 189

DACOITY.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 17 Bom. 369

See RIOTING.

[I. L. R. 15 All. 22

Penal Code, s. 395—Forcible removal of cows by Hindus from the possession of Mahomedans—Rioting.] Where a large body of Hindus acting in concert and apparently under the influence of religious feeling attacked certain Mahomedans who were driving cattle along a public road and forcibly deprived them of the possession of such cattle under circumstances which did not indicate any intention of subsequently restoring such cattle to their lawful owners:—*Held*, that the offence of which the Hindus were guilty was dacoity under s. 395 of the Indian Penal Code, and not merely riot. QUEEN-EMPRESS *v.* RAM BARAN.

[I. L. R. 15 All. 299

DAMAGE.

——, Absence of proof of.

See PLEDGOR AND PLEDGEE.

[I. L. R. 19 Calc. 322

DAMAGES.

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See CONTRACT —CONSTRUCTION OF CONTRACTS.

[I. L. R. 21 Calc. 173

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—CONTRACTS.

[I. L. R. 13 All. 330

——, Assessment of.

See NEGLIGENCE.

[I. L. R. 16 Bom. 254

——, Right to.

See INJUNCTION—SPECIAL CASES—OBSTRUCTION TO RIGHTS OF PROPERTY.

[I. L. R. 16 Bom. 533

——, Suit for.

See ADMINISTRATOR.

[I. L. R. 17 Bom. 637

See ATTACHMENT—LIABILITY FOR WRONGFUL ATTACHMENT.

[I. L. R. 17 Calc. 436

DAMAGES—*continued.*

See BOMBAY MUNICIPAL ACT, 1888, s. 527.
[I. L. R. 17 Bom. 307

See CALCUTTA MUNICIPAL ACT, 1876, s. 357.
[I. L. R. 18 Calc. 91

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 2.
[I. L. R. 21 Calc. 528

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R. 15 Bom. 580

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.
[I. L. R. 18 Calc. 10

See CO-SHARERS—SUITS WITH RESPECT TO JOINT PROPERTY.
[I. L. R. 15 Mad. 111

See LIBEL.
[I. L. R. 14 Bom. 97

See MASTER AND SERVANT.
[I. L. R. 15 Mad. 73

See NEGLIGENCE.
[I. L. R. 16 Bom. 254

See POSSESSION—EVIDENCE OF TITLE.
[I. L. R. 21 Calc. 244

See RECORDER OF RANGOON, JURISDICTION OF.
[I. L. R. 20 Calc. 689

See RIGHT OF SUIT — CONTRACTS OR AGREEMENTS.
[I. L. R. 15 Bom. 1

See RIGHT OF SUIT—COSTS.
[I. L. R. 12 All. 166
[I. L. R. 14 Bom. 100

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[I. L. R. 17 Calc. 707
[I. L. R. 15 Mad. 298
[I. L. R. 14 Bom. 100

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION — GOVERNMENT, SUITS AGAINST.
[I. L. R. 17 Calc. 291

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[I. L. R. 15 Mad. 298

DAMAGES—*continued.*

——, for use and occupation of land.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT, SUIT FOR.
[I. L. R. 17 Calc. 541

(1) SUITS FOR DAMAGES.

(*a*) BREACH OF CONTRACT.

1.—*Madras Abkari Act—Madras Act (III of 1864), s. 6—Rights of renter of Abkari farm—Right of Collector to close shops included in the renter's contract—Collector's orders modified by Board of Revenue.*] The plaintiff rented from Government an Abkari farm, on terms which reserved certain powers of control to the Collector, and obtained a license under the Abkari Act. He did not manage the shops in the contract area himself nor obtain separate licenses for their management by others. The Collector made orders which were subsequently modified by the Board of Revenue, directing the closing of certain shops which the plaintiff had sublet and directing that others should not be opened. It was found that the Collector's orders were not in excess of the powers reserved to him under the contract, and that they had not been issued arbitrarily or otherwise than in good faith. In a suit for breach of contract and for damages occasioned to the plaintiff by these orders. *Held*:—the plaintiff was not entitled to recover. SECRETARY OF STATE FOR INDIA *v.* CHOYI.
[I. L. R. 14 Mad. 82

(*b*) TORTS.

2.—*Trespass — Building on plaintiff's land—Mandatory injunction—Suit for further damages for alleged disobedience of mandatory injunction—Cause of action — Right of suit—Execution of decree—Suit to enforce decree.*] The defendant having built a wall on the plaintiff's land, the plaintiff brought a suit in which he asked for damages for the trespass, and an injunction, and a decree was passed for damages and for a mandatory injunction directing the defendant within two months to remove the wall, and to restore the plaintiff's premises to their former condition. Two years subsequently the plaintiff brought another suit for damages, alleging his cause of action to be the defendant's disobedience of the mandatory injunction, and proving as damages that people were deterred from becoming his tenants by fearing that, owing to the defendant's previous action, the hillside on which the plaintiff's premises were situate was likely to fall. There was no structural or other damage done to the plaintiff's property other than that which was done prior to the commencement of the previous suit:—*Held*, that the suit would not lie for damages for non-compliance with the mandatory injunction, to compel the performance of which the plaintiff had his remedy in execution. *Mitchell* v. *Darley Main Colliery Company*, L. R. 11 Ap. Cas. 127, distinguished. JAWITRI *v.* EMILE.
[I. L. R. 13 All. 98

DAMAGES—*concluded.*

(2) MEASURE AND ASSESSMENT OF DAMAGES.

(*a*) BREACH OF CONTRACT.

3.—*Contract which had become impossible to perform—Further and other relief—Damages—Contract Act (IX of 1872), s. 56—Novation.*] Money having been advanced, a contract was made to secure repayment of it by a usufructuary mortgage, with possession to be given to the lender, of land, which, however, had then already been attached under a decree, and had been taken under the Collector's management under s. 326 of the Code of Civil Procedure. To perform the contract by delivery of possession of the land having thus become impossible, it was *held*, that the lender of the money was entitled to compensation, the damages being the amount of the advance, together with interest from the date when, had performance been possible, the land should have been made over to him. SETH JAIDAYAL *v.* RAM SAHAE.

[I. L. R. 17 Calc. 432

(3) REMOTENESS OF DAMAGES.

4.—*Suit for damages against lessor, including costs—Costs of litigation—Cause of action.*] In 1883, *A*, the trustee of a certain charity, executed in favour of *X* and *Y* an agricultural lease for nine years and delivered over possession of the lands comprised in it, being part of the trust property. The lease contained a provision that it should be cancelled on default being made in payment of the rent and *kist*, and it contained no express covenant for quiet enjoyment. In 1887 default was made in payment of the rent and *kist*. *A* thereupon cancelled the lease and sued *X* and *Y* and obtained a decree for the arrears. In a suit by *X* for damages for breach of contract against *A* the plaintiff alleged that certain ryots setting up a false claim had evicted *X* from the lands demised at the instigation of A, who had subsequently sought unsuccessfully to obtain further advantages for himself:—*Held*, that the plaint disclosed a good cause of action against the lessor; and that even if the plaintiff had substantiated his allegations against his lessor, he would not have been entitled to recover the cost of civil and criminal proceedings against the ryots who had evicted him. *Mahomed Isa Khan* v. *Kisto Lal*, 6 B. L. R. Ap. 44, referred to. VITHILINGA PADAYACHI *v.* VITHILINGA MUDALI.

[I. L. R. 15 Mad. 111

DAMDUPAT, RULE OF.

See HINDU LAW—USURY.

[I. L. R. 15 Bom. 84, 625

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See HINDU LAW—CUSTOM—ENDOWMENT.

[I. L. R. 14 Bom. 90

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[I. L. R. 13 Mad. 133

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See PENAL CODE, s. 372.

[I. L. R. 15 Mad 41, 323

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[I. L. R. 14 Bom. 612

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[I. L. R. 14 Bom. 612

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—CHARITABLE BEQUEST.

[I. L. R. 14 Bom. 1

DEADLY WEAPON.

See PENAL CODE, s. 148.

[I. L. R. 15 All. 19

DEAF AND DUMB PERSON.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 18 Calc. 341

DEBT.

See INSOLVENT ACT, s. 39.

[I. L. R. 19 Calc. 146

——, Assignee of.

See TRANSFER OF PROPERTY ACT, s. 135.

[I. L. R. 13 Mad. 225

——, Barred by limitation.

See CONTRACT ACT, s. 25.

[I. L. R. 14 Bom. 390

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW—WHAT CONSTITUTES LEGAL NECESSITY.

[I. L. R. 13 Mad. 189

[I. L. R. 21 Calc. 190

DEBTOR.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R. 19 Calc. 336

——, Assignment by.

See INSOLVENCY—ASSIGNMENT BY DEBTOR.

[I. L. R. 19 All. 223

[I. L. R. 16 Mad. 397, 499

DEBTOR—*continued.*

——, Discharge of.

See INSOLVENCY — INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.
[I. L. R. 19 Calc. 730

DEBTOR AND CREDITOR.

See DEED—CONSTRUCTION.
[I. L. R. 16 Bom. 172

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.
[I. L. R. 16 Mad. 397

See LIMITATION ACT, 1877, ART. 144 — ADVERSE POSSESSION.
[I. L. R. 16 Bom. 172

See PRINCIPAL AND SURETY — RIGHTS AND LIABILITIES OF SURETY.
[I. L. R. 15 Bom. 48

1.—*Account—Burden of proof—Presumption—Principal and agent—Restriction of principal's liability to debts proved to be just.*] Fraud and undue influence having been found, with the result that a decree cancelled transfers executed in favour of a creditor by a *talukdar* whose manager had received in his name money forming the consideration for the transfers, an account was directed to be taken of the sums actually due and payable by the principal. Directions were given for the payment, not of all the money received from the creditor by the manager, but only of sums (*a*) shown to have been lent by the creditor to the principal himself personally, and of those (*b*) received by the manager on behalf of the principal in the course of a prudent management. The burden of proof lay on the creditor of showing that any particular advance fell within the class (*b*); and where the advance having been received by the manager, had been partly used in payment of Government revenue, due on the estate managed by him:—*Held*, that the Court below had rightly presumed that the rents should have covered the revenue due; and this presumption having to be met, it was for the creditor to bring proof to overcome it. PARTAB BAHADUR SINGH *v.* CHITPAL SINGH.
[I. L. R. 19 Calc. 174
[L. R. 19 I. A. 33

2.—*Collusive discharge by one of two creditors—Estopped—Fraud.*] In 1877 the plaintiff executed a deed of hypothecation to one of two partners to secure a loan obtained from them jointly. In 1881 the plaintiff sold, *inter alia*, the hypothecated property to defendants Nos. 2 to 4, and it was arranged that the secured debt should be paid off by the vendees. They failed to do this, but in 1882 they executed a mortgage for the amount due in favour of the other of the two partners, and he thereupon gave a written discharge to the plaintiff, who was found to have been acting in collusion with him to the disadvantage of his partner, the holder of the hypothecation-bond.

DEBTOR AND CREDITOR—*continued.*

The latter brought a suit in 1885 upon the hypothecation-bond and obtained a personal decree against the present plaintiff which was *ex parte*, the amount of the decree being declared to be charged on the land in the possession of defendants Nos. 2 to 4. Meanwhile, defendant No. 1, who was the assignee of the mortgage of 1882, had obtained a decree upon it against defendant No. 4. This decree not having been executed, he subsequently sued upon the mortgage again and obtained a decree against defendants Nos. 2 to 4. The plaintiff now sued to have the last-mentioned decree set aside and recover the balance of the purchase-money from defendants Nos. 2 to 4. The Court of First Instance passed a decree for the amount claimed and declared it to be charged on the land. Defendant No. 1 preferred an appeal in which defendants Nos. 2 to 4 were joined by the Court of First Appeal which dismissed the suit:—*Held*, that plaintiff, having allowed a decree to be passed against him *ex parte* in the suit of the holder of the hypothecation-bond, and having obtained a collusive discharge from the other partner, was not entitled to recover against the defendants. KANAGAPPA *v.* SOKKALINGA.
[I. L. R. 15 Mad. 382

3.—*Deed of settlement—Attachment of settled property by creditors of settlor—Summons to remove attachment—Order dismissing summons, effect of—Civil Procedure Code (XIV of 1882), ss. 280—283—Sale of settled property in execution against settlor—Purchaser, right of—Right to set aside deed—Suit by creditors to set aside deed on ground of fraud—Limitation Act (XV of 1877), art. 95.*] On the 7th April 1877, one *N* executed a trust-deed whereby certain immoveable property belonging to him was conveyed to trustees in trust for himself for life or until he became insolvent, or attempted to alienate, assign or incumber the same, and then for his wife and children. At the date of the deed, *N* was largely indebted, and two or three months prior to the date of the deed he had deposited the bulk of his moveable property with a friend, who endeavoured to compromise with his (*N's*) creditors, and who applied the said property in paying off a portion of his debts. About a fortnight after the trust-deed was executed, *N* filed a suit against one *H* and others. That suit was dismissed, and *N* was ordered to pay *H's* costs. In execution of that decree for costs *H*, in July 1882, attached a house which was part of the property settled by the trust-deed of April 1877. Thereupon the trustee of the deed claimed to have the attachment removed, alleging that he was in possession as trustee. He took out a summons for that purpose, which was dismissed on the 19th December 1882, without prejudice to the rights of the parties to file a suit in respect of the subject-matter thereof. No suit, however, was filed by any of the parties, and the house was sold in execution. *H*, the execution-creditor, bought it at the sale, and was put into possession, which he retained until his death in December 1888. After his death his executors took possession. They desired to sell it, but were unable to do so, in consequence of the claim put

DEBTOR AND CREDITOR—*continued.*

forward by *N's* wife and children (defendants Nos. 1, 3 and 4) under the trust-deed of 1877. They accordingly filed this suit against *N's* wife and children (defendants Nos. 1, 3 and 4), and the surviving trustee of the trust (defendant No. 2), praying for a declaration that the defendants had no right or interest, present or future or contingent, in the said property; that they (the plaintiffs) as executors of *H* were absolutely entitled to it, and that the trust-deed was fraudulent and void against the plaintiffs and other creditors of *N*. It was contended that the suit was barred under Art. 95 of Sch. II of the Limitation Act XV of 1877, having been filed more than three years after 1882, at which date the fraud was alleged by *H* himself and relied on by him in the attachment proceedings:—*Held*, that the suit did not fall within Art. 95 and was not barred. The substantial prayer of the plaint was a declaration that the plaintiffs were absolute owners of the property in suit, and the basis on which that prayer was rested was the sale to *H* in 1883. The "relief" asked for was the declaration of the plaintiffs' absolute title: the "ground" of the relief was the acquisition of that title by virtue of the certificate of sale coupled with a denial of it by the defendants. Such a case did not come within the purview of Art. 95. It was further contended that the effect of the order in December 1883, dismissing the summons which had been taken out by the trustees to having the attachment removed, was to declare the trust settlement invalid, and that as no steps had been taken by the trustee against whom that order was made to establish the validity of the trust within a year from the date of that order, the defendants could not now rely on their rights as *cestuis que trust* under that deed. It was argued that the Judge in dismissing the summons must have intended to pronounce the whole settlement invalid, having regard to s. 280 of the Civil Procedure Code (Act XIV of 1882), because otherwise he ought, according to that section, to have ordered, in express terms, the removal of the attachment from the reversionary estate of wife and children:—*Held*, that the portion of s. 280 relied on only applies where the property is in the possession of the judgment-debtor "partly on his own account and partly on account of some other person." Here the property was, at the time of the attachment, and had been for some months previously, in the sole possession of the trustee, and neither wholly nor partly in the possession of the judgment-debtor. The conditions under which the latter part of s. 280 becomes applicable were not present in the present case, and the Judge in dealing with the summons was not, therefore, called on to make any declaration as to the precise limits of the interest in the property upon which he held the attachment to be maintainable. *Held*, that there was no such order passed against the interests represented by the first, third and fourth defendants as to come under the terms of s. 283 of the Civil Procedure Code. *Held*, on the evidence, that the deed of settlement was fraudulent and void as against creditors. It was proved

DEBTOR AND CREDITOR—*continued.*

that at or before the date of the settlement, *N* was largely indebted. Nearly the whole of his moveable property had been deposited with a friend, in order that the creditors might be compromised with and a portion of his debts paid off, and under those circumstances he made a settlement of this immoveable property, which was all that could really be said to have then belonged to him on the eve of the litigation which was about to commence. But *held*, also, dismissing the suit, that the plaintiffs were only entitled to an estate for the life of *N*. They were the representatives of *H*, and his claim, upon which this suit was founded, arose by virtue of his having purchased the right, title and interest of *N* the settlor, and the right so purchased did not include the right to set aside his own deed. *Held*, also, that the plaintiffs were not entitled to succeed inasmuch as this suit was not filed by them on behalf of and for the benefit of all the creditors of *N*. *Semble*—A claim to set aside a deed of settlement as fraudulent and void as against creditors can only be made by creditors whose claims are not barred by limitation. *Quære*—Whether the existence of creditors who were creditors at the date of the deed of settlement is necessary. BURJORJI DORABJI PATEL *v.* DHUNBAI.

[I. L. R. 16 Bom. 1

4.—*Bankruptcy in Mauritius—Right of suit by trustee under foreign composition-deed in British India—Judgment of foreign Court—Insolvency—Stamp Act (I of 1879), s. 31—Registration Act (III of 1877), s. 17 (e).*] A debtor and the firm of which he was a member were adjudicated bankrupts in Mauritius, and a receiver was appointed by the Court. Subsequently the creditors met and resolved that if the adjudication was annulled, a composition, payable by instalments, be accepted in full satisfaction of their debts, and that the security of the plaintiff's firm be accepted for payment of such composition, and that the bankrupts' estate be assigned to that firm, and that the plaintiff be appointed trustee to carry out such arrangement. An instrument was executed to give effect to these resolutions and was concurred in by the receiver and approved by the Court, which annulled the adjudication and ordered that the bankrupts' estate in Mauritius and India vest in the plaintiff, who was appointed trustee to carry out the said composition with full powers of realization. The plaintiff now sued to recover the moveable and immoveable property of the bankrupts in India. *Held* (1) that the above instrument was valid as a composition-deed and did not require to be stamped and registered as a conveyance: and that any surplus that might remain after payment to the creditors did not belong to the plaintiff's firm, but was subject to a trust for the bankrupts; (2) that the plaintiff was entitled to a decree for the amount expended by him in payment of the creditors, together with such costs as were incurred by him in recovering debts due to the estate and could not be recovered from the debtors, and the costs of certain sales and a mortgage incurred in realization of the estate; (3) that plaintiff was

DEBTOR AND CREDITOR—*concluded.*

entitled to a decree for possession of the immoveable property until the sum due was paid to him by the defendants or was satisfied out of the rents and profits of the property. No order made by the Court at Mauritius can operate to transfer the ownership of immoveable property in British India. So *held*, without deciding that the Court cannot compel the bankrupt when within its jurisdiction to execute in favour of the trustee such a deed as will, in accordance with the formalities of the local law, render the order of the Court effectual. SUBBARAYA *v.* VYTHILINGA.

[I. L. R. 16 Mad. 85

DEBTS.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—DEBTS.

[I. L. R. 13 All. 76

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY FATHER.

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[I. L. R. 14 Bom. 189

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[I. L. R. 20 Calc. 453

DECLARATORY DECREE.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

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[I. L. R. 17 Calc. 906

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[I. L. R. 15 Bom. 309

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[I. L. R. 17 Bom. 56

(1) SUITS CONCERNING DOCUMENTS.

1.—*Specific Relief Act* (*I of* 1877), *s.* 42—*Consequential relief.*] Plaintiff being in possession of certain land as an incumbrancer under a registered instrument agreed orally with the mortgagor in 1885 to purchase it. The mortgagor subsequently sold the land to others who took the conveyance which was registered with notice of the plaintiff's mortgage and of the oral agreement with him. Plaintiff now sued for a declaration that the conveyance was not binding on him and for a specific performance of the oral agreement:—*Held*, that the suit was not bad for want of a prayer for delivery up, and cancellation of, the conveyance. KANNAN *v.* KRISHNAN.

[I. L. R. 13 Mad. 324

2.—*Suit for cancellation of document and for possession—Withdrawing portion of claim—Specific Relief Act, s.* 42.] Plaintiffs, members of a Malabar *tarwad*, sued (1) for the cancellation of a deed of gift of certain immoveable property alleged to belong to their *tarwad*; (2) for restoration of the property the subject of gift, either to plaintiff No. 1, or defendant No. 1, the present *karnavan*, on behalf of the *tarwad*. The Munsif dismissed plaintiff's suit on the merits. On appeal, the Subordinate Judge allowed plaintiffs, who were unable to pay the Court-fees for recovery of the property, to withdraw that portion of the claim, and decreed for plaintiff as to the remaining portion, *viz.*, for cancellation of the document. On second appeal it was *held*, reversing the decree below, that the prayer for restoration of the property being in the circumstances of the case maintainable, it was not competent to plaintiffs to restrict themselves to the other kind of relief sought, and that the maintenance of the suit in its maimed form would be an evasion of s. 42 of the Specific Relief Act. BIKUTTI *v.* KALENDAN.

[I. L. R. 14 Mad. 267

(2) ADOPTION.

3.—*Declaratory decree not obtainable by absolute right—Discretion of Court—Suit to have adoption declared void.*] It is discretionary with a Court to grant or to refuse a declaratory decree with regard to the circumstances—*Sreenarain Mitter* v *Kishen Soondery Dassee*, 11 B. L. R. 171; L. R. I. A. Sup. Vol. 149, referred to and followed. A *talukdar* died, leaving a widow; also a son, who, having succeeded as *talukdar*, died childless. This son's widow, being in possession, sued for a declaration that an adoption by the father's widow, to the father, was void and ineffectual. The ground of suit was that, at some time or other after the death of the plaintiff, the person alleging himself to have been adopted might obtain the *talukdari*, unless his adoption should now be negatived. With regard to all the circumstances,

DECLARATORY DECREE, SUIT FOR—*continued.*

(2) ADOPTION—*concluded.*

the refusal of such a declaration was approved by their Lordships. If the person alleged to have been adopted should sue hereafter, the question would be decided whether he was validly adopted or not. PIRTHI PAL KUNWAR *v.* GUMAN KUNWAR.

[I. L. R. 17 Calc. 933
[L. R. 17 I. A. 107

(3) REVERSIONERS.

4.—*Specific Relief Act (I of* 1877) *s.* 42—*Suit by remote reversioner.*] The intervention of two life estates does not preclude a reversioner from obtaining a declaration of his interest as to land under the Specific Relief Act, s. 42. KANDASAMI *v.* AKKAMAL.

[I. L. R. 13 Mad. 195

(4) DECLARATION OF TITLE.

5.—*Specific Relief Act (I of* 1877), *s.* 42—*Suit for declaration of title as holder of a stanom to which a malikana allowance is attached.*] Suit to declare plaintiff's title to the *stanom* of fifth Raja of Palghat; the first Raja (defendant No. 1) received a *malikana* allowance from Government payable to the various *stanomdars*, but had refused to pay to plaintiff the fifth Raja's share:—*Held*, the plaintiff being entitled to sue for further relief than the declaration of his title, and having omitted to do so, the suit must be dismissed under Specific Relief Act, s. 42. KOMBI *v.* AUNDI.

[I. L. R. 13 Mad. 75

6.—*Specific Relief Act (I of* 1877), *s.* 42—*Objection that consequential relief is available—Objection raised for first time on appeal.*] The plaintiff, as heir to her husband, brought a suit, in which Government was not represented, for a declaration of the title to a quarter share of the *jenmi* value of land taken up under the Land Acquisition Act:—*Held*, that the suit for a declaration only was maintainable. Even assuming that the plaintiff was able and called upon in this case to ask for further relief, *held*, following the decision in *Limba bin Krishna* v. *Rama bin Pimplu*, I. L. R. 13 Bom. 548, that the suit should not be dismissed on this ground, the objection not having been raised in either of the lower Courts. CHOMU *v.* UMMA.

[I. L. R. 14 Mad. 46

7.—*Specific Relief Act (I of* 1877), *ss.* 42, 56—*Consequential relief—Amendment of plaint on appeal—Raising fresh issue on appeal.*] The plaintiff obtained a decree in a suit in which he averred that he was entitled to the office of Sheik of Kallai and to certain properties attached thereto, and prayed for a declaration that the defendant had no right either to the office of Sheik or to the properties in question, for an injunction restraining him from interfering with the properties or doing anything in any way inconsistent with the plaintiff's right to the office, and for further and other relief. It appeared, on the evidence for the defence, that the defendant was

DECLARATORY DECREE, SUIT FOR—*continued.*

(4) DECLARATION OF TITLE—*continued.*

in possession of part of the property, but no issue had been framed as to the maintainability of the suit under the last clause of the Specific Relief Act, s. 42:—*Held* (on appeal by the defendant) that the Court of First Instance should take evidence and try an issue specifically directed to this question. It having appeared on the evidence recorded on that issue that the defendant was substantially in possession of the office of Sheik and of its emoluments, *Held*, that the suit was not maintainable, although an injunction was asked for as relief consequential on the declaration. The plaintiff was permitted to pay additional stamp duty and amend the plaint by adding a prayer for possession. ABDULKADAR *v.* MAHOMED.

[I. L. R. 15 Mad. 15

8.—*Specific Relief Act (I of* 1877), *s.* 42—*Consequential relief.*] In a suit in which the plaintiffs sought declarations that they were members of an undivided Aliyasantana family with the defendants, that certain property belonged to the family, and that plaintiff No. 1, the senior member of the family, was entitled to have the lands registered in his name, the defendants denied the allegations in the plaint, and pleaded that the suit for declarations only was not maintainable, and that it was barred by limitation. It was found that the plaintiffs had separated themselves from the defendants, and had for more than twelve years been excluded to their own knowledge from the joint-family property:—*Held*, that if, as alleged by the plaintiffs, plaintiff No. 1 was the *de jure ejaman* of the family, he was entitled to the possession and management of the family property, and a suit for a mere declaration of his right would not lie—*Chandu* v. *Chathu Nambiar*, I. L. R. 1 Mad. 381, distinguished. MUTTAKKE *v.* THIMMAPPA.

[I. L. R. 15 Mad. 186

9.—*Specific Relief Act (I of* 1877), *s.* 42—*Consequential relief—Civil Procedure Code, s.* 53—*Amendment of plaint on appeal.*] A *karar* was executed by members of two Malabar *tarwads*, by which the *tarwad* of the plaintiffs and defendants Nos. 1 and 2 was amalgamated with that of which defendant No. 3 was a *karnavan;* part of the property of the plaintiffs' branch was in the possession of defendants Nos. 1 and 3, and part of it was held under demises from defendant No. 3. The plaintiffs sued for a declaration of their title to this property and for a declaration that the *karar* was not binding on them. An issue was framed on the question whether the suit was maintainable for want of a prayer for all relief consequential on these declarations:—*Held* (1) that the suit was not maintainable for want of a prayer for possession of the lands under demise; (2) that the plaintiffs should not be permitted to amend the plaint on appeal by the addition of such a prayer. NARAYANA *v.* SHANKUNNI.

[I. L. R. 15 Mad. 255

DECLARATORY DECREE, SUIT FOR—*continued.*

(4) DECLARATION OF TITLE—*continued.*

10.—*Specific Relief Act (I of 1877), s. 42—Hindu law—Inheritance—Illegitimate son of a Sudra—Further relief.*] The widows of a *shrotriemdar*, who was a Sudra, brought a suit for a declaration of their title by inheritance to his lands against his illegitimate son, who had been registered as *shrotriemdar* in lieu of his deceased father, and to whom certain of the ryots had attorned. The defendant claimed to be legitimate according to the customary law governing the family, although his parents might not have been married at the time of his birth, by reason of his parents having performed the ceremony of *pariyam* before his birth:—*Held*, that the suit was not precluded by Specific Relief Act, s. 42. CHINNAMMAL *v.* VARADARAJULU.

[I. L. R. 15 Mad. 307

10.—*Suit for a mere declaration of title without consequential relief—Specific Relief Act (I of 1877), s. 42—Injunction—Amendment of plaint.*] The plaintiff sued for a declaration that he was entitled to succeed, on his father's death, to a *talukdari* estate, to the exclusion of defendant No. 1, who, he alleged, was a supposititious child set up by his step-mother to defeat the plaintiff's right of inheritance. It appeared that defendant No. 1 had obtained a decree against the plaintiff's father, establishing his legitimacy, and declaring him entitled to receive maintenance out of the estate in question. In accordance with this decree, the Talukdari Settlement Officer (defendant No. 2), who was in management of the estate under Act XXI of 1881, paid defendant No. 1 an allowance of Rs. 200 a month on account of his maintenance. The plaintiff alleged that the payment to defendant No. 1 was illegal and wrongful, but he did not ask for an injunction restraining him from receiving the allowance. The defendants contended that the suit was not maintainable because the plaintiff had sued for a mere declaration of title without asking for consequential relief:—*Held* (CANDY, J., doubting) that the suit was barred under s. 42 of the Specific Relief Act as the plaintiff had omitted to seek the relief of an injunction against defendant No. 1, restraining him from receiving future payment of maintenance. *Held*, further, that plaintiff was at liberty to amend his plaint by praying for an injunction as against both defendants. SARDARSINGJI *v.* GANAPATSINGJI.

[I. L. R. 14 Bom. 395

12.—*Specific Relief Act, s. 42—Refusal of declaratory decree, the case made for it being defective.*] Under the Specific Relief Act, s. 42, a suit was brought for a decree declaratory of the plaintiffs' title to be *mutwalis* and managers of property from ancient times connected with religious observances, *viz.*, a ghat upon the Jumna with temples adjoining; of their title also to receive a proportion of the offerings; and they also claimed to have the proceeds of a decree obtained by the defendants against a third party

DECLARATORY DECREE, SUIT FOR—*continued.*

(4) DECLARATION OF TITLE—*continued.*

spent upon repairs:—*Held*, that the suit had been rightly dismissed in the first Court. Even if the evidence had shown that the plaintiffs had some rights in respect of the property in question, they had, nevertheless, so far failed in giving definite proof of their claims that they were not entitled to the decree claimed. No decision was, however, given, nor was any opinion expressed, with respect to other rights, which either of the parties might have, or claim to have, relating to the property. MAINA *v.* BRIJMOHAN.

[I. L. R. 12 All. 587
[L. R. 17 I. A. 187

13.—*Specific Relief Act, s. 42—Consequential relief.*] Where a suit was brought in which, the defendants being admittedly the tenants of the plaintiffs, the plaintiffs prayed for a declaration that certain entries of the defendants in the revenue records as occupancy-tenants, and certain orders of the Revenue Courts maintaining those entries, be set aside, and for a declaration that the defendants were *shikmis* and not occupancy-tenants, and that the land in question was the plaintiffs' *sir* land; and it was held that such a suit could not be brought within the Civil Court's jurisdiction by dropping all the reliefs claimed except the last-mentioned declaration, that being merely of importance as incidental to the previous ones, and as a roundabout mode of obtaining a declaration that the defendants were not the plaintiff's occupancy-tenants:—*Held per* EDGE, C. J., and MAHMOOD, J.—Whether the last-mentioned prayer is one which could be brought under s. 42 of the Specific Relief Act, *quære*. MAHESH RAI *v.* CHANDER RAI.

[I. L. R. 13 All. 17

14.—*Specific Relief Act (I of 1877), s. 42—Suit for declaration of title by an objector in execution-proceedings—Consequential relief—Civil Procedure Code, s. 283.*] In a suit under Civil Procedure Code, s. 283, for a declaration that the sale to defendant No. 2 of certain land in execution of a decree was invalid, it appeared that the land had been attached in execution of a decree obtained by defendant No. 2 against defendant No. 1, who held it as the plaintiff's tenant, that the plaintiff had intervened unsuccessfully in the execution-proceedings and had been referred to a regular suit, and that the land had been brought to sale and purchased by defendant No. 2 who was now in possession:—*Held*, that the suit was not maintainable for want of a prayer for possession. KUNHIAMMA *v.* KUNHUNNI.

[I. L. R. 16 Mad. 140

15.—*Specific Relief Act (I of 1877), s. 42—Executor, or administrator of a shareholder, rights of—"Holding a share," meaning of—Agreement, construction of—Objection taken for first time in appeal.*] Prior to the year 1863 W W carried on an extensive timber trade in Burmah.

DECLARATORY DECREE, SUIT FOR—*continued.*

(4) DECLARATION OF TITLE—*continued.*

In that year the defendant company was formed for the purpose of taking over the business from him together with the capital and assets engaged therein. The nominal capital of the company was Rs. 25,00,000 divided into one thousand shares of Rs. 2,500 each. On the 22nd July 1864, an agreement carrying out the above object was executed between *W W* and the defendant company. This agreement set forth the assets and property to be transferred, and classified them as (*a*) "fixed assets," which consisted of immoveable property, buildings, &c., valued at Rs. 2,76,000 or thereabouts; and (*b*) assets other than fixed assets which consisted of what were called "forest operations," and of valuable contracts, rights and concessions from the King of Burmah, &c. The agreement further specified the consideration to be paid to *W W* for each of these classes of assets. For the "fixed assets" he was (under the 12th clause of the agreement) to receive one hundred fully paid-up shares of the company. That clause contained certain provisions as to the payment of the ordinary dividend upon those shares, and concluded with a provision that the directors of the company should not be bound to consent to or to recognize as valid any assigment made by *W W* his executors or administrators of the shares, or any of them, within five years from the date of the registration of the company. For the remaining assets it was provided by the 13th clause of the agreement that *W W* his executors or administrators should be entitled, *so long as he or they should hold the hundred shares, to an extra or preferential dividend*, payable out of such surplus net profits as might remain in any year after paying a dividend of twelve per cent. on all the shares of the company, including the said hundred shares, and after setting apart an amount (left to the discretion of the directors) for the reserve fund. The said extra or preferential dividend was to be one-third of such surplus net profits. The said 13th clause also provided that if *W W* died within the above stated period of five years, his executors or administrators should not be entitled to the said extra or preferential dividend after the expiration of the said period, notwithstanding they might continue to hold the said shares. Subsequently to the execution of this agreement the business and assets were transferred to the company by *W W* and one hundred fully paid-up shares were duly allotted to him under cl. 12, and his name was entered on the register of shareholders. In 1888, *W W* then domiciled in England, died. By his will he appointed his three brothers—*R W*, *L A W* and *A F W*—his executors, and he directed that his executors should hold the said shares and all his interest therein and attached to the holding thereof upon trust for such of his said brothers as might survive him, if more than one, as joint tenants. *R W* died in the testator's life-time, and only *A F W* proved the will. On the 27th September 1888, letters of administration, with the will annexed, were granted by the High Court of Bombay to the plaintiff in this suit (*F Y S*) as

DECLARATORY DECREE, SUIT FOR—*continued.*

(4) DECLARATION OF TITLE—*continued.*

attorney for the said executor *A F W*. On the 29th September 1889, the said letters of administration were produced to, and registered with, the defendant company. The hundred shares continued to stand in the testator's name in the register of shareholders. In a parallel column in the register, under the heading "Remarks," the following entry was made:—"Administration in India to the estate of *W W* has been granted to Mr. *F Y S* as attorney for *A F W*." Save for this entry the register remained unaltered after the testator's death. The plaintiff now sued to have it declared that cl. 13 of the agreement was still in operation, and that as such administrator as aforesaid he was entitled to the extra or preferential dividend payable on the said one hundred shares if and when there should be sufficient net profits to allow payments thereof under the said clause. The company disputed the plaintiff's claim. They contended that *A F W*, the proving executor of the testator's will, had ceased to hold the shares as executor, and was holding them as trustee under the specific bequest in the will, and that he was only entitled to the preferential dividends, if, at the time when such dividends were declared, he was holding the shares in the capacity of executor and as an undistributed part of the testator's estate. They insisted that the plaintiff should prove that he so held the shares before he could be entitled to the declaration sought for. The executor was examined in England on commission. He deposed that the estate had been got in, and the debts paid; that the estate had not been divided, because it would not be in accordance with the private wishes of the testator, which they (*i.e.*, he and his brother *L A W*) were aware of; that, apart from these private wishes, there was no reason why the estate should not be divided between his brother and himself:—*Held*, by FARRAN, J., and by the Court of Appeal, that the plaintiff was entitled to the declaration sought for. The executor or his attorney (the plaintiff) was still the registered holder of the shares, and under cl. 13 of the agreement it was intended that *W W*, his executors or administrators should be entitled to the extra dividend so long as he or they should be the registered holder or holders of the shares, without reference to the beneficial interest therein. There was nothing to be found in the agreement, express or implied, showing the intention of the parties to regard anything but the legal holding, and to go beyond that holding would virtually be to add a new term to the agreement. On appeal, the defendants contended that the Court would not make a declaratory decree with regard to a right which (as in the present case) was future and contingent, there being no fund actually in existence, when the suit was brought, from which a preferential dividend could be claimed, and no certainty that there ever would be such a fund:—*Held*, by the Court of Appeal, that the present case was one in which in the interests of both parties the Court, in the exercise of a sound discretion, should make a declaration as to the

DECLARATORY DECREE, SUIT FOR—*continued.*

(4) DECLARATION OF TITLE—*concluded.*

right in question. The right was existent, and although the exercise of it was undoubtedly contingent on there being a balance of profits as contemplated by cl. 13 of the agreement, the very nature of the agreement assumed that there might and probably would be such a balance, and a large sum had been already applied towards the dividend in question. Further, it was intended that the directors should exercise their discretion as to the amount to be carried to the reserve fund upon which the balance of profit available for the preferential dividend depended. It was, therefore, from the very nature of the case, important that the directors should know for certain whether the right to a preferential dividend was still in existence as contended by the plaintiff, or had come to an end. The circumstance, moreover, that the objection had been taken for the first time on appeal would by itself be fatal to it. BOMBAY BURMAH TRADING CORPORATION *v.* SMITH.

[I. L. R. 17 Bom. 197

16.—*Specific Relief Act* (*I of* 1877), *s.* 42—*Mere possession on the one side and unjustifiable dispossession on the other—Right of the possessor dispossessed by a wrong-doer, as against the latter—Injunction—Wakf.*] Lawful possession of land is sufficient evidence of right as owner, as against a person who has no title whatever, and who is a mere tresspasser. The former can obtain a declaratory decree, and an injunction restraining the wrong-doer. In such a suit the defence was that the land was *wakf*, and the defendant *mutwalli* of it. Both Courts found that the plaintiff was in possession as purchaser from some of those who were entitled to sell. But the first Court did not find a fact, which the Appellate Court found, *viz*, that the property had been constituted *wakf*. Both Courts, however, concurred in the finding that the defendant at all events was not the *mutwalli*, and had no title:—*Held*, that the plaintiff was entitled to a declaratory decree against this defendant as to his right, and an injunction restraining him from interfering with his possession. For the purposes of the plaintiff's claiming such a decree, it was not necessary that he should negative the *wakf* as to the validity of the endowment, no decision being needed. This could not be decided either way in this suit, as parties interested were not before the Court. ISMAIL ARIFF *v.* MAHOMED GHOUS.

[I. L. R. 20 Calc. 834 ; L. R. 20 I. A. 99

(5) ENDOWMENT.

17.—*Suit to eject one claiming to be the jheer of a muth—Specific Relief Act* (*I of* 1877), *s.* 42—*Consequential relief.*] Three disciples of a *muth* brought a suit, alleging that the defendant was in possession of the *muth* under a false claim of title as the successor to the late *jheer*, and praying that it be declared that he was not the duly appointed successor to the late *jheer*, and that an appointment to the vacant office of *jheer* be made by the Court, but no consequential relief was asked for:—*Held*, that the suit was not maintainable for the reason that relief consequential on the declaration sought under s. 42 of the Specific Relief Act was not asked for. STRINIVASA AYYANGAR *v.* STRINIVASA SWAMI.

[I. L. R. 16 Mad. 31

(6) ORDERS OF CRIMINAL COURTS.

18.—*Declaration of title to land—Specific Relief Act* (*I of* 1877), *s.* 42—*Criminal Procedure Code* (*Act X of* 1882), *s.* 133, *order under for removal of an obstruction standing upon certain land—Ownership of such land—Public roads—Bombay Land Revenue Act* (*Bombay Act V of* 1879), *s.* 37.] A Magistrate made an order against the plaintiff, under s. 133 of the Criminal Procedure Code (Act X of 1882), for the removal of a certain *otta* standing in front of the plaintiff's shop as an obstruction to the public way. The plaintiff, thereupon, brought this suit against the Secretary of State for India in Council for a declaration that the land on which the *otta* stood was his property and not that of the Government:—*Held*, that the public roads being vested by s. 37 of the Land Revenue Code (Bombay Act V of 1879) in the Government of Bombay, they were "interested to deny" the plaintiff's title to the land, and, therefore, under s. 42 of the Specific Relief Act (I of 1877), the plaintiff (subject to the discretion of the Court) was entitled to a declaration as against the Government of his right to the land, and the plaintiff was not called upon to wait until the Government had taken possession of the land. It was contended that the jurisdiction of the Court to make the declaration prayed for was taken away by the last clause of s. 133, which provides that "no order made by a Magistrate under this section shall be called in question in any Civil Court." *Held*, that the Magistrate's order under this section is not a conclusive determination of the question of title. SECRETARY OF STATE FOR INDIA *v.* JETHABHAI KALIDAS.

[I. L. R. 17 Bom. 293

(7) MISCELLANEOUS SUITS.

19.—*Specific Relief Act* (*I of* 1877), *s.* 42—*Suit for declaration that decree is fraudulent—Injunction.*] Suit for a declaration that a decree of a Subordinate Court was passed fraudulently, the Judge having been bribed by the decree-holder, the present defendant:—*Held*, that the suit did not lie. The remedy would appear to be by way of injunction to restrain the decree-holder from executing the decree. KUNHAMED *v.* KUTTI.

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DECREE—*continued.*

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[I. L. R. 20 Calc. 74
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[I. L. R. 20 Calc. 388

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[I. L. R. 16 Bom. 683
[I. L. R. 21 Calc. 200

DECREE—*continued.*

(1) FORM OF DECREE.

(*a*) GENERAL CASES.

1.—*N.-W. P. Land Revenue Act (XIX of* 1873), *ss.*113 *and* 114—*Partition, application for—Order on objection as to title raised in course of partition-proceedings.*] A Collector or Assistant Collector trying a question of title raised in the course of the hearing of an application for partition under the N.-W. P. and Land Revenue Act (XIX of 1873) is not bound to cause a formal decree to be drawn up embodying the result of his order or decision on such point. NIAZ BEGAM *v.* ABDUL KARIM KHAN.

[I. L. R. 14 All. 500

(*b*) MORTGAGE.

2.—*Redemption suit for — Sub-mortgage—Accounts taken between mortgagee and sub-mortgagee.*] In a suit for the redempion of land which has been sub-mortgaged by the mortgagee, in which suit the sub-mortgagees are co-defendants, the mortgagee is entitled to have an account taken of the sub-mortgage. The judgment should direct an account of what is due to the original mortgagee and then of what is due to the sub-mortgagee; and that upon payment to the latter of the sum due to him, not exceeding the sum found due to the original mortgagee, and on payment of the residue, if any, of what is due to the original mortgagee, both shall re-convey to the mortgagor. NARAYAN VITHAL MAVAL *v.* GANOJI.

[I. L. R. 15 Bom. 692

3.—*First and second mortgages—Suit by second mortgagee for sale—Plaint denying or ignoring title of first mortgagee.*] Where a second mortgagee coming into Court and denying or ignoring the title of a prior mortgagee, asks to have the property sold as if there were no prior incumbrance, the suit should be dismissed, and should not be decreed with words of limitation reserving the rights of the prior mortgagee. *Raghunath Prasad* v. *Jurawan Rai*, I. L. R. 8 All. 105, referred to. SALIG RAM *v.* HAR CHARAN LAL.

[I. L. R. 12 All. 548

4.—*Rights of persons advancing money to pay off a prior mortgage—Suit to sell mortgaged property under mortgage.*] Where, in a suit to bring certain immoveable property to sale under a mortgage, it was found that the predecessor in interest of one of the defendants had advanced money upon a mortgage of the same immoveable property in order to save a portion thereof from sale under two prior mortgages:—*Held*, that such defendant was entitled to the benefit of the payment so made, and that the proper decree in the suit should be that the plaintiff could only bring that portion of the property in suit to sale on payment to the said defendant of the money advanced as aforesaid, with interest from the date of payment to the date of the receipt of the final decree by the Court of First Instance together with proportionate costs; such payment to be made within 90 days from the ascertainment of

DECREE—*continued.*

(1) FORM OF DECREE—*continued.*

(*b*) MORTGAGE—*concluded.*

such amount and the receipt of the final decree by the Court of First Instance; otherwise the plaintiff to be absolutely debarred from all right to redeem that particular portion of the property mortgaged. TULSA *v.* KHUB CHAND.

[I. L. R. 13 All. 581

5.—*Suit for declaration of right to redeem—Decree for redemption.*] *Quære.*—Whether the Court can pass a decree for redemption when the plaint seeks only a declaration of the right to redeem. PERUMAL *v.* KAVERI.

[I. L. R. 16 Mad. 121

(*c*) POSSESSION.

6.—*Suit for possession by owners of adjoining estates—Right of parties to equal moieties of property decreed, although each had claimed the exclusive title—Decrees dismissing their suits, reversed, the evidence being sufficient as to the former, but not the latter right.*] In cross-suits between the owners of adjoining estates, each claimed against the other, to be entitled to, and to be put into possession of, property situate on the boundary between their estates. The High Court dismissed both claims on the ground that the evidence of the exclusive right of either party was insufficient:—*Held* that, although this might be so, there was, nevertheless, sufficient evidence of possession having been held by both the one and the other, and of the title of both, to support the conclusion that each had a claim to an equal moiety, to which each should be declared entitled. Each should be put into possession of the moiety which was opposite to and adjoined his estate. KHAGENDRA NARAIN CHOWDRY *v.* MATANGINI DEBI.

[I. L. R. 17 Calc. 814

[L. R. 17 I. A. 62

7.—*Suit for exclusive possession of property—Finding that parties have equal right to possession—Decree for joint possession.*] Where the plaintiff claimed exclusive possession of immoveable property to which the defendant also claimed to be exclusively entitled:—*Held*, that the Court was competent, upon the finding that the property belonged to the parties jointly, to give the plaintiff a decree for joint possession. *Wali-ullah Khan* v. *Muhammad Israr-ullah Khan*, I. L. R. 10 All. 627, distinguished. WAHID ALAM *v.* SAFAT ALAM.

[I. L. R. 12 All. 556

8.—*Suit for exclusive possession — Decree for joint possession, circumstances under which such decree will be granted.*] Although under certain circumstances in a suit for exclusive possession of immoveable property a decree for joint possession may be given, nevertheless such a decree should not be given unless the plaintiff asks for it, and the evidence shows that he is entitled to it. ANTU SINGH *v.* MANDIL SINGH.

[I. L. R. 15 All. 412

DECREE—*continued.*

(1) FORM OF DECREE—*concluded.*

(*c*) POSSESSION—*concluded.*

9.—*Direction for inquiry as to mesne profits—Suit for possession and mesne profits—Civil Procedure Code, s.* 212.] Where, under s. 212 of the Code of Civil Procedure a Court in a suit for possession of immoveable property and mesne profits passes a decree for the property and directs an inquiry into the amount of *mesne* profits, the direction as to the inquiry into the amount of *mesne* profits need not necessarily be contained in the decree. *Puran Chand* v. *Roy Radha Kishen*, I. L. R. 19 Calc. 132, referred to. FATIMA BIBI *v.* ABDUL MAJID.

[I. L. R. 14 All. 531

10.—*Suit to set aside sale in execution of decree on a mortgage to secure two debts — One debt only binding on tarwad—Declaration of right to possession.*] In a suit by members of a Malabar *tarwad* to set aside a sale in execution of a decree, passed on a mortgage which had been executed by their *karnavan* and senior *anandravans* in consolidation of two prior mortgages executed, respectively, to secure two debts, it appeared that one of these debts was binding and the other not binding on the *tarwad* :—*Held*, that the Court should declare the plaintiffs entitled to the property sold notwithstanding the sale, but subject to the charge created to secure the binding debt. KUNHI MANNAN *v.* CHALI VADUVATH.

[I. L. R. 14 Mad. 494

(2) CONSTRUCTION OF DECREE.

(*a*) GENERAL CASES.

11.—*Hindu widow—Construction of order made by Settlement Officer awarding estate to a Hindu widow—Transfer by widow, effect of.*] The plaintiffs obtained a declaratory decree that they were the reversioners and heirs apparent, expectant on the future death of a widow who, at the time of suit, had survived two co-widows, and that they, the plaintiffs, would be entitled to inherit at her death the estate that had belonged to the deceased husband. All parties had proceeded, as far as to the present appeal, on the view that the surviving widow had the widow's estate only. But an order made in the course of the settlement operations in 1865 had conferred the estate of the deceased on the three widows as well as on his mother, in equal shares of one-fourth each :—*Held*, that there was nothing in this order to show an intention to give to the mother and widows anything more than an interest, such as that which a Hindu widow takes ; and that the inheritance would devolve in due course of law, an alienation which the widow had made operating only for her life-time. MUNNALAL CHAODRI *v.* GAJRAJ SINGH.

[I. L. R. 17 Calc. 246

12.—*Possession—Construction in execution of an order in Council.*] An order of Her Majesty in Council was that a decree-holder should recover what was demarcated by "the *thakbust* map and

DECREE—*continued.*

(2) CONSTRUCTION OF DECREE—*concluded.*

(*a*) GENERAL CASES—*concluded.*

proceedings of 1839" :—*Held*, on the construction of the order, that the latter words meant the proceedings relating to the *thakbust* map, and did not include a survey map which differed from it. RADHA PERSHAD SINGH *v.* TORAB ALI.

[I. L. R. 18 Calc. 108

(*b*) MORTGAGE.

13.—*Consent decree—Decree in foreclosure suit—Redemption, extension of time for—Appeal, consent decree on—Interest — Transfer of property Act (IV of* 1882), *ss.* 86, 87.] The plaintiffs obtained a decree for foreclosure. On appeal the lower Appellate Court made a decree in terms of s. 86 of the Transfer of Property Act, ordering the defendant to pay the amount due with interest and costs calculated up to the 28th February 1890, or in default to be foreclosed his right to redeem. Upon second appeal on the 30th January 1891 it was "ordered and decreed with consent of the parties, that the defendant be allowed one month's time to redeem," and in other respects the appeal was dismissed. On the 28th February 1891 the defendant deposited in Court a sum calculated so as to include interest up to that date, but subsequently objected to pay interest after the 28th February 1890 :—*Held*, by PETHERAM, C.J., and BEVERLEY, J. (MACPHERSON, J., dissenting) that the effect of the consent decree was to extend the time for redemption to the 28th February 1891, and that interest should be allowed to that date. RAFIKUNNESSA BIBI *v.* TARINI CHURN SARKAR.

[I. L. R. 20 Calc. 279

(*c*) PRE-EMPTION.

14.—*Decree for pre-emption conditioned on payment within fixed time—Omission to state consequence of non-payment—Limitation.*] Where in a suit for pre-emption the decree, while decreeing the plaintiff's right to pre-emption upon payment of the pre-emptive price within one month from the date of the decree, omitted to state what would be the effect on the plaintiff's suit of non-payment within the prescribed period :—*Held*, that the plaintiff, unless he had paid the pre-emptive price before the expiry of the said month, could not enforce his decree for pre-emption. *Kodai Singh* v. *Jaisri Singh*, I. L. R. 13 All. 376, referred to. *Bandhu Bhagat* v. *Shah Muhammad Taqi* Weekly Notes, 1892, p. 40, dissented from. JAI KISHN *v.* BHOLA NATH.

[I. L. R. 14 All. 529

(3) ALTERATION OR AMENDMENT OF DECREE.

15.—*Duty of Court to amend decree—Limitation—Civil Procedure Code*, 1882, *s.* 206.] There is no limitation for an application under s. 206 of the Civil Procedure Code, to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment. KALU *v.* LATU.

[I. L. R. 21 Calc. 259

DECREE—*continued.*

(3) ALTERATION OR AMENDMENT OF DECREE—*continued.*

16.—*Time fixed by decree for assumption of character of Sannyasi—Enlargement on appeal of that time.*] The plaintiff sued for a declaration of his right as *jheer* of a *muth* and for possession of the property of the *muth*, and obtained a decree which was, however, made contingent upon his assuming the character of a *sannyasi*, which he had been directed to do on being nominated as *jheer*, within the period of four months. The defendant preferred an appeal against this decree, and the plaintiff preferred an appeal praying for the enlargement of the period fixed, within which he was to become a *sannyasi*, pending the disposal of the appeal preferred by the defendant. On the plaintiff's appeal:—*Held*, the Court had power to extend the time as prayed. RANGACHARIAR *v.* YEGNA DIKSHATUR.

[I. L. R. 13 Mad. 524

17.—*Amendment of decree after confirmation of decree on appeal.*] *Quære.*—Whether the rule in *Sundara* v. *Subbanna*, I. L. R. 9 Mad. 354, as to the amendment of decrees, *viz.*, that a Court has power to amend its decree by bringing it into conformity with the judgment after the said decree has been confirmed on appeal, is correct. CHATHAPPAN *v.* PYDEL.

[I. L. R. 15 Mad. 403

See PYDEL *v.* CHATHAPPAN.

[I. L. R. 14 Mad. 150

18.—*Power of Court to rectify its own mistake in order—Civil Procedure Code (Act XIV of* 1882), *s.* 370—*Insolvency of plaintiff.*] On the 3rd of August a case came on for hearing. Prior to that date the plaintiff in this suit had been adjudicated an insolvent and did not appear, but the Official Assignee appeared and applied for a postponement. The Court, accordingly, made the following order:—"It is ordered that the suit be dismissed under s. 370 of the Civil Procedure Code unless the Official Assignee elects on or before the fifth day of October next to continue the suit and give security for the defendants' costs." The time for complying with the order was subsequently extended, and the plaintiff in the meanwhile obtained an order allowing the insolvency proceedings to be withdrawn. The defendant now applied that the suit should be dismissed pursuant to the terms of the above order. The plaintiff objected, as he was now no longer an adjudged insolvent, and was ready to prosecute the suit:—*Held*, that the order had been made in an improper form, inasmuch as s. 370 gives the Court no power to order the dismissal of the suit. This part of the order, therefore, was wrong, and the Court could now rectify it by cancelling that portion of the order, and, as a consequence, refusing the defendants' application. LEKHRAJ CHUNILAL *v.* SHAMLAL NARRONDAS.

[I. L. R. 16 Bom. 404

DECREE—*continued.*

(3) ALTERATION OR AMENDMENT OF DECREE—*continued.*

19.—*Civil Procedure Code, ss.* 206, 209, 622—*Interest given by amendment in decree which was not given by the judgment—Superintendence of High Court.*] The plaintiffs sued for recovery of a certain sum of money and interest up to date of suit and for interest during the suit and subsequent to decree until satisfaction thereof. The Court in its judgment awarded the plaintiffs a specified sum of money and ordered that the rest of the plaintiff's claim should stand dismissed. Subsequently the Court amended its decree by adding a decretal order for the payment to the plaintiffs by the defendant of interest during the pendency of the suit and after decree until the satisfaction of the debt.—*Held* that it was illegal for the Court to decree the claim for interest by way of amendment of its decree, and that the order so amending the decree was open to revision. HASAN SHAH *v.* SHEO PRASAD.

[I. L. R. 15 All. 121

20.—*Extending time for payment mentioned in decree—Decree conditioned on payment of a sum certain within a fixed time—Payment after time specified in decree.*] A Court, having framed a decree conditioned on the payment by the plaintiff of a sum certain within a specified time, has no power to extend the time for payment after the period mentioned in the decree has elapsed. *Har Narain Singh* v. *Chaudhrain Bhagwant Kuar*, I. L. R. 13 All. 300, referred to. RAM LAL DUBE *v.* HAR NARAIN.

[I. L. R. 13 All. 400

See KODAI SINGH *v.* JAISRI SINGH.

[I. L. R. 13 All. 376

21.—*Alteration of decree made by predecessor—Competency of Judge before taxation to reconsider an order as to costs made by his predecessor in office—Certificate of pleader's fee.*] A Subordinate Judge, in granting the application of a plaintiff before him for permission to withdraw with leave to file a fresh suit in the same matter, made an order as to costs in favour of the defendants in the following terms:—"As the case has not been contested to the bitter end, half the pleader's fees are allowed and the process expenses, &c., incurred in the case, except those already refused to the defendants. For travelling and incidental expenses defendants to put in a bill in one week: this to be subject to the decision of the Court after hearing both parties. The application under s. 373 of the Code of Civil Procedure is granted with leave to the plaintiff to bring a fresh suit for the same matter. Costs allowed to defendants as above." The Judge who had made the above order having been transferred before taxation was completed:—*Held*, that it was competent to his successor at taxation and before granting payment of the pleader's fees to consider whether the certificate given by a

DECREE—*concluded.*

(3) ALTERATION OR AMENDMENT OF DECREE—*concluded.*

pleader as to the fee paid to him in the case was according to rule, and to disallow payment of any fee not duly certified as paid. DICK *v.* DICK.

[I. L. R. 15 All. 169

22.—*Decree in terms of an award ordering (inter alia) delivery of moveable property—Loss of part of such moveable property and consequent failure to deliver—Application to insert in decree an order to pay value of such moveable property in event of failure to deliver—Civil Procedure Code (XIV of* 1882), *ss.* 206—8.] A partition-suit brought by a son against his father was referred to arbitration. On the 9th January 1890, the award was published, and on the 27th March 1890, the defendant moved for and obtained a decree in terms of the award. By this decree it was ordered that in satisfaction of the plaintiff's claim the defendant should pay to him Rs. 1,05,000 in the manner therein stated, *viz.*, Rs. 40,000 to be paid forthwith, and the balance of Rs. 65,000 to be paid "upon the plaintiff's delivering to the defendant certain specified property, which included two vessels or *buglows*, called respectively the *Nasri* and *Sambuk*." In no event was defendant to be required to pay the Rs. 65,000 before the 15th November 1890. At the date of the decree the vessel *Sambuk* was at sea on a voyage, and on the 18th June 1890, while still on the voyage, she was lost. On the 15th November 1890, the plaintiffs' attorneys demanded payment of the balance of Rs. 65,000. They offered to deliver the other properties specified in the decree, but stated that the vessel *Sambuk* had been lost. They offered to pay its value, which they estimated at Rs. 1,000. The defendants, however, demanded the delivery of the *buglow*, which they stated to be worth a very large sum. The defendants having, under the circumstances, refused to pay the Rs. 65,000, the plaintiff applied for execution of the decree, which was refused. He then obtained a rule calling on the defendant to show cause why the decree of the 27th March should not be amended or rectified by stating therein the amount of money to be paid to the defendant as an alternative if delivery of the vessel *Sambuk* could not be made, such delivery having become impossible:—*Held*, that the rule must be discharged. The objection was an objection to an award, not to a decree. Possibly it might have been open to the parties to object to the award before it was filed, on the ground that it ought to have stated a sum to be paid to the defendant in case some of the property could not be delivered to him. If such an objection had been made, the Court might possibly have remitted the award, or refused to file it. No such objection, however, was taken, and the award was filed, and a decree obtained, in accordance with the award. The award could not be modified by the Court, nor could the decree, which must be in accordance with the award. AHMED BIN ESSA KHALIFFA *v.* ESSA BIN KHALIFFA.

[I. L. R. 17 Bom. 657

DECREE-HOLDER.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — IRREGULARITY.

[I. L. R. 15 All. 318, 407
[I. L. R. 20 Calc. 673

——, Purchase by.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R. 14 Mad. 498

DEED. *Col.*

1. Construction 305
2. Proof of Genuineness ... 306

——, Assignment by.

See RIGHT OF SUIT — CONTRACTS OR AGREEMENTS.

[I. L. R. 15 Bom. 1

——, Attestation of.

See CONTRACT — ALTERATION OF CONTRACTS — ALTERATION BY PARTY.

[I. L. R. 15 Bom. 44

——, Cancellation of.

See LIMITATION ACT, 1877, ART. 91.

[I. L. R. 13 Mad. 44
[I. L. R. 14 Mad. 26
[I. L. R. 16 Mad. 311
[I. L. R. 16 Bom. 186

——, Decision as to genuineness of.

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 21 Calc. 430

See RES JUDICATA—ORDERS IN EXECUTION OF DECREE.

[I. L. R. 14 Bom. 206

——, made without intention of acting on it.

See HINDU LAW—ENDOWMENT—PROOF OF ENDOWMENT.

[I. L. R. 18 Calc. 10

——, of conditional sale.

See MORTGAGE—FORM OF MORTGAGES.

[I. L. R. 14 All. 195

——, Proof of execution.

See ADMISSION.

[I. L. R. 14 Bom. 516

See ONUS PROBANDI — HINDU LAW—ALIENATION.

[I. L. R. 19 Calc. 249

——, Suit to set aside.

See DEBTOR AND CREDITOR.

[I. L. R. 16 Bom. 1

DEED—*continued.*

See LIMITATION ACT, 1877, ART. 91.

[I. L. R. 16 Bom. 186
[I. L. R. 14 Mad. 101
[I. L. R. 19 Calc. 629

See ONUS PROBANDI—DEEDS, SUITS TO ENFORCE OR SET ASIDE.

[I. L. R. 12 All. 523
[I. L. R. 15 Bom. 549

See PARDANASHIN WOMEN.

[I. L. R. 14 All. 8

——,Transferring property conditionally.

See STAMP—MADRAS REGULATION II OF 1825.

[I. L. R. 16 Mad. 419

(1) CONSTRUCTION.

1.—*Debtor and creditor—Assignment or appropriation of rent till payment of debt—Intention to appropriate rent as distinguished from the lands—Aivaj (money)—Usufructuary mortgage—Right to take kabuliats from tenants and make recoveries.*] Where under an instrument a debtor allotted to his creditor his *aivaj* on account of *deshpande hak* and *inam* recoverable from the villages and undertook not to meddle till the *aivaj* was paid, and the instrument did not describe the lands mentioned therein by metes and bounds, but only as being in the occupation of certain persons paying so much rent, and contained a clause that the *aivaj* of Rs. 63 (the sum total of rents) had been allotted, and that the creditor might take *kabuliats* from the occupants and make the recoveries:—*Held*, that the term *aivaj* although capable of meaning property generally must, from the context of the document mean monies or sums. *Held*, further, that the language of the instrument showed a clear intention to appropriate rents as distinguished from the lands themselves. *Held*, also, that even if the transaction were regarded as a mortgage, it could only be a usufructuary mortgage, which would confer no right to have the property sold. HANMANT RAMCHANDRA DESHPANDE *v.* BABAJI ABAJI DESHPANDE.

[I. L. R. 16 Bom. 172

2.—*Sale, with right reserved of repurchase within a period, distinguished from mortgage—Construction of documents of sale and of agreement for re-sale.*] A document purporting to be one of sale, though it is accompanied by a contract reserving to the vendor a right to repurchase the property sold, on repaying the purchase-money within a certain time, is not on that account to be construed as if it were a mortgage. *Alderson* v. *White*, 2 De G. and J. 105, referred to and followed, the law of India and of England being the same on this point. BHAGWAN SAHAI *v.* BHAGWAN DIN.

[I. L. R. 12 All. 387
[L. R. 17 I. A. 98

DEED—*continued.*

(1) CONSTRUCTION—*concluded.*

3.—*Sale-deed or deed of gift—Mahomedan law, gift.*] A deed which purported on the face of it to be a deed of sale contained a recital that the consideration had been received by the vendor and returned as a gift to the vendee. The words used were—"*Hath * * * nawasi apne ki bai katai karke zar-i-saman tamam wo kamal wasul pakar bakhsh diya aur hiba kardiya.*" The deed was stamped as a sale-deed and was duly registered, but no possession was given under it, and there was apparently no evidence external to the deed that any consideration had passed between the parties:—*Held*, by EDGE, C. J., and TYRRELL and KNOX, JJ., that in the absence of any evidence external to the deed itself of the intention of the parties, the deed in question must be taken to be a deed of sale. *Per* MAHMOOD, J., *contra.*—The lower Appellate Court having found that no consideration had passed, the deed must be considered as a deed of gift, though wearing the appearance of a sale-deed, and, possession not having been given, under Mahomedan Law the gift was invalid. ANGAN LAL *v.* MUHAMMAD HUSAIN.

[I. L. R. 13 All. 409

4.—*Deeds releasing future and contingent interests—Agreement excluding a possible question between the parties as to the effect of words in a will, under which they took their rights.*] Three brothers, under their father's will, were entitled, each on attaining full age, to the testator's residuary estate in equal shares. When all had attained full age, two having been minors at the testator's death, they effected a separation of their interests derived from the will, and executed to one another instruments of compromise and partition containing words relating to possible claims which they gave up. One of the two younger brothers afterwards died, having taken, under the will of the other younger one, all the estate of the latter, who had died without issue before him. The eldest then attempted to raise the question whether, on the one hand, the brothers had taken under their father's will absolute interests, or on the other, interests that were divested, and went over to a surviving brother in the event of death without issue. As to this the Courts below differed, but the Appellate Court decided, and on this appeal the decision was affirmed, that the above instruments relinquished future demands, this claim included, relating to the brothers' estates under their father's will. GREENDER CHUNDER GHOSE *v.* TROYLUCKHO NATH GHOSE.

[I. L. R. 20 Calc. 373

(2) PROOF OF GENUINENESS.

5.—*Registration—Registered document, proof of execution of.*] Mere registration of a document is not in itself sufficient proof of its execution. *Kristo Nath Koondoo* v. *Brown*, I. L. R. 14 Calc. 176, at p. 180, dissented from. SALIMATUL-FATIMA *alias* BIBI HOSSAINI *v.* KOYLASHPOTI NARAIN SINGH.

[I. L. R. 17 Calc. 903

DEED—*concluded.*

(2) PROOF OF GENUINENESS—*concluded*

6.—*Deeds not intended to operate according to their tenor—Nullity of transaction apart from fraud.*] Documents, principally a *potta* and a *kobala*, executed between a Mahomedan *pardanashin* lady and one of her relations, purported to represent, the one a *putni* lease from her of her lands, and the other a sale of her house and ground, from the date of the execution. That she received the consideration was not proved, but had it passed it would have been distributed between the two deeds, which formed part of one and the same transaction. From the acts of the parties it was established that her intent was to deprive her heirs, not herself, and that she had no intention to part with the property *in præsenti*, as the deeds represented that she did:—*Held*, that, the latter not being intended to operate according to their tenor, the whole transaction was a nullity. JIBUN NISSA *v.* ASGAR ALI.

[I. L. R. 17 Calc. 937

DEFAMATION.

See COMPLAINT—INSTITUTION OF COMPLAINT.

[I. L. R. 14 Mad. 379

See JURISDICTION OF CIVIL COURT—COSTS.

[I. L. R. 15 Bom. 599

See LIBEL.

[I. L. R. 14 Bom. 97, 532

See PRIVILEGED COMMUNICATION.

[I. L. R. 14 Mad. 51

1.—*Expression of suspicion—Slander by a railway guard—De minimis non curat lex.*] A railway guard, having reason to suppose that a passenger travelling by a certain train from Madras to Chingleput had purchased his ticket at an intermediate station, called upon the plaintiff and others of the passengers to produce their tickets. As a reason for demanding the production of the plaintiff's ticket, he said to him in the presence of the other passengers "I suspect you are travelling with a wrong (or false) ticket," which was the defamation complained of. The guard was held to have spoken the above words *bonâ fide*:—*Held*, the plaintiff was not entitled to a decree for damages. SOUTH INDIAN RAILWAY COMPANY *v.* RAMAKRISTNA.

[I. L. R. 13 Mad. 34

2.—*Penal Code, s.* 499, *exception* 10—*Privilege—"Mala fides."*] The complainant, a Brahman, who had been put out of caste was re-admitted by the executive committee of the caste after performing expiatory ceremonies This re-admission was not approved of by the accused, who formed a faction of the caste; and they, after an interval of six months, distributed in the bazaar to all classes of the public printed papers in which the complainant was described as a *doshi* or sinner, which signified that he was a person unfit to be associated with. The accused were charged with the offence of defamation. They pleaded privilege, and it was admitted that they had acted without malice:—*Held*, that the accused had not acted in good faith, and that the publication was not under the circumstances privileged and protected by Penal Code, s. 499, exception 10, and that the accused were accordingly guilty of defamation. THIAGARAYA *v.* KRISHNASAMI.

DEFAMATION—*continued.*

[I. L. R. 15 Mad. 214

3.—*Penal Code, s.* 499—*Privilege of party—Statement made by accused person in Court not in the ordinary course of proceedings.*] A person who was being defended by Counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character. He was now charged with defamation and convicted in the Resident's Court at Bangalore. On an appeal to the High Court, *held*, that the occasion was not privileged, the words complained of, being used maliciously and not in the ordinary course of the proceedings, were uttered maliciously, and the conviction was right. HAYES *v.* CHRISTIAN.

[I. L. R. 15 Mad. 414

4.—*Penal Code* (*Act XLV of* 1860), *s.* 500—*Publication—Publication of defamatory matter in a newspaper—Responsibility of the editor and proprietor of a newspaper.*] The editor and proprietor of a newspaper, who prints his paper containing a defamatory article in one city and permits copies of the paper to be sent by the printer to persons in another city, is responsible, in the absence of proof to the contrary, for the publication of the defamatory article in the latter city. QUEEN-EMPRESS *v.* GIRJASHANKAR KASHIRAM.

[I. L. R. 15 Bom. 286

5.—*Penal Code* (*Act XLV of* 1860), *s.* 500—*Privilege of witness—Investigation by Police.*] A statement made in answer to a question put by a Police-officer under Criminal Procedure Code, s 161, in the course of investigation made by him, is privileged, and cannot be made the foundation of a charge of defamation. QUEEN-EMPRESS *v.* GOVINDA PILLAI.

[I. L. R. 16 Mad. 235

6.—*Penal Code* (*Act XLV of* 1860), *s.* 500—*Statement by a witness—Privilege.*] A witness cannot be prosecuted for defamation in respect of statements made by him when giving evidence in a judicial proceeding. QUEEN-EMPRESS *v.* BABAJI.

[I. L. R. 17 Bom. 127

QUEEN-EMPRESS *v.* BALKRISHNA VITHAL.

[I. L. R. 17 Bom. 573

7.—*Penal Code* (*Act XLV of* 1860), *s.* 499, *exception* 9—*Imputation made in good faith by a person for the protection of his interest—Privileged communication.*] In order to substantiate a defence under the ninth exception to s. 499 of the Penal Code (Act XLV of 1860), it is sufficient to

DEFAMATION—*concluded.*

show that the imputation was made in good faith and for the protection of the interest of the accused. Any one in the transaction of business with another has a right to use language *bonâ fide* which is relevant to that business, and which a due regard to his own interest makes necessary, even if it should directly or by its consequences be injurious or painful to another. The complainant, *P*, and his partner *B* were owners of the steam-ship *Tanjore*. The ship was mortgaged to the Bank of Bengal for Rs. 50,000. In March 1890, the complainant desired to send the vessel to Jeddah with pilgrims and freight. For this purpose he entered into an agreement with *S*, the Agent of the Bank, to pay Rs. 5,000 to the Bank as a condition precedent to the vessel being allowed by the mortgagees to go on her intended voyage. The sum was to be paid out of the freight and passage-money collected by the complainant. On the 9th April 1890, on which day the vessel sailed, the complainant promised to pay the sum in the evening. This he did not do. Thereupon, *S* wrote to the complainant, demanding immediate payment of the amount, and also sent for him five or six times, but the complainant neither called at *S's* office, nor made the payment. On the 12th April *S* wrote to *B*, the complainant's partner, as follows:—"*P* (*i.e.*, the complainant) has misappropriated the Rs. 5,000 which were to have been paid to the Bank for allowing the *Tanjore* to go to Jeddah, and is keeping out of the way." Immediately after the receipt of this letter the complainant tendered the money to the Bank's solicitors. Thereupon, *S* wrote to *B* on the 13th April, withdrawing the statement made by him about the complainant in his letter of the 12th April. On the 14th April, the complainant filed a complaint against *S* charging him with defamation in his letter of the 12th April 1890. *S* was convicted by the Magistrate under s. 500 of the Penal Code and sentenced to pay a fine of Rs. 200:—*Held*, reversing the conviction and sentence, that the imputations complained of were made in good faith, and for the protection of the interest of the accused, and, therefore, fell under the ninth exception to s. 499 of the Penal Code. QUEEN-EMPRESS *v.* SLATER.

[I. L. R. 15 Bom. 351

DEFENDANT.

See LIMITATION ACT, 1877, s. 3.

[I. L. R. 16 Bom. 197

See LUNATIC.

[I. L. R. 16 Bom. 132

——, Right of, to appear where summons not served.

See WITHDRAWAL OF SUIT.

[I. L. R. 15 Bom. 160

DEFENDANTS.

See PARTIES—ADDING PARTIES TO SUITS—DEFENDANTS.

[I. L. R. 13 Mad. 32, 197

DEFENDANTS—*concluded.*

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS.

[I. L. R. 14 Bom. 286

DEKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879).

See ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

[I. L. R. 17 Bom. 227

——, s. 3, cl. (w).—*Application of Act to non-agricultural classes — Special Judge, revisional jurisdiction of.*] The Dekhan Agriculturists Relief Act (XVII of 1879) is not limited in its application to agriculturists only, but applies to all classes under certain conditions. The plaintiff sued to recover Rs. 50 as money spent by him on account of the defendant. The suit was filed in the Court of the First Class Subordinate Judge at Satara, where both parties resided. The Subordinate Judge passed a decree in plaintiff's favour. The Special Judge, in revision, reversed this decree, and dismissed the suit. The plaintiff thereupon applied to the High Court, under s. 622 of the Code of Civil Procedure (Act XIV of 1882), urging that as neither party to the suit was an agriculturist, the Special Judge had no revisional jurisdiction in the matter:—*Held*, that the Special Judge had such jurisdiction, the suit being one falling within cl. (*w*) of s. 3 of the Dekhan Agriculturists Relief Act. GANESH KRISHNAJI *v.* KRISHNAJI.

[I. L. R. 14 Bom. 387

——, s. 3, cls. (x) and (z).—*Suit to redeem a chattel pledged — Moveable property, redemption of—Appeal—Subordinate Judge, jurisdiction of.*] A suit for the redemption of a chattel is one falling under cl. (*x*) of s. 3 of the Dekhan Agriculturists Relief Act (XVII of 1879). In districts in which the Act is in force this clause is applicable to cases in which neither party is an agriculturist. The word "mortgaged" in cl. (*z*) of s. 3 of the Act applies only to immoveable property. A suit was brought to redeem an ornament pledged for a sum below Rs. 500. The suit was filed in the Court of the First Class Subordinate Judge at Satara, where Act XVII of 1879 is in force. The Subordinate Judge passed a decree for redemption of the pledge:—*Held*, that though neither of the parties was an agriculturist, the case fell under Chapter II of the Act, and no appeal lay against the decree of the Subordinate Judge:—*Held*, further, that the Special Judge had revisional jurisdiction in the matter. KASHIRAM MULCHAND *v.* HIRANAND SURATRAM.

[I. L. R. 15 Bom. 30

——, s. 3 (3), cl. (x).—*Suit to recover rent—Question of title incidentally decided—Analogy with the decisions under the Small Cause Courts Acts—Appeal to the District Court—Revision by the Special Judge—Subordinate Judge, jurisdiction of.*] In a suit to recover a sum of Rs. 30 as rent under s. 3 (3), cl. (*x*) of the Dekhan Agriculturists

DEKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879), s. 3 (3), cl. (x)—*continued.*

Relief Act (XVII of 1879), a Second Class Subordinate Judge incidentally determined the question of the plaintiff's title to the land for which the rent was claimed. The point then arose as to whether the decision of the suit by the Subordinate Judge could be appealed against, or whether it was open to revision by the Special Judge under s. 50 of the Act:—*Held* that although a question of title was incidentally raised and decided in the case, still by analogy with the decisions under the several Small Cause Courts Acts, the suit as brought was one properly falling under cl.(*x*) of s. 3 (3) of the Dekhan Agriculturists Relief Act (XVII of 1879), and that no appeal lay to the District Court from the decree of the Subordinate Judge who decided the suit. SHIDU *v.* GANESH NARAYAN.

[I. L. R. 16 Bom. 128

———, s. 3, cl. 4 —*Accounts—Duty of Court to take accounts in mode directed by Act.*] It being obligatory upon the Court to take accounts in the mode directed in the Dekhan Agriculturists Relief Act (XVII of 1879), which requires annual *rests*, and that not having been done, the decree was reversed by the High Court on appeal, and the case sent back to the lower Court to take accounts according to the Act. HANMANT RAMCHANDRA *v.* BABAJI ABAJI DESHPANDE.

[I. L. R. 16 Bom. 172

———, s. 6, cl. (3). —*Redemption, suit for — Possession of a defendant not as a mortgagee — Suit in ejectment — Appeal — Jurisdiction of the District Court.*] In a redemption suit governed by the provisions of Chapter II of the Dekhan Agriculturists Relief Act (XVII of 1879), one of the defendants being sued merely as a person in possession:—*Held*, that the suit as against that defendant was one in ejectment. A suit in ejectment is not governed by cl. (3), s 6, of the Dekhan Agriculturists Relief Act, and an appeal against the decree in such suit lies to the District Court. SAKHARAM *v.* SHRIPATI.

[I. L. R. 16 Bom. 183

———, s. 13.

See MORTGAGE—ACCOUNTS.

[I. L. R. 14 Bom. 19

———, s. 15D.—*Act as amended by Act XXII of* 1882, *s.* 6.—*Several mortgage bonds—Suit for account—Jurisdiction of Subordinate Judge.*] A suit brought under s. 15D of the Dekhan Agriculturists Relief Act (XVII of 1879 and XXII of 1882) must include all the mortgages affecting the land. If the total amount of the debt exceeds Rs. 500, the case does not fall under Chapter II of the Act. If it exceeds Rs. 5,000 the First Class Subordinate Judge alone has jurisdiction, (see s. 24 of Act XIV of 1869). BABAJI *v.* HARI.

[I. L. R. 16 Bom. 351

1.—s. 53.—*Special Judge—Power of to review his own order—Review, grounds of.*] The Code of

DEKHAN AGRICULTURISTS RELIEF ACT (XVII OF 1879), s. 53—*concluded.*

Civil Procedure is not applicable to proceedings before the Special Judge under the Dekhan Agriculturists Relief Act (XVII of 1879). The Special Judge has, therefore, no jurisdiction to grant a review of a decree or order once made by him on the ground of the discovery of new evidence. BABAJI BIN PATLOJI *v.* BABAJI BIN MAHADU.

[I. L. R. 15 Bom. 650

2.—s. 53, and s. 54—*Special Judge—Revisional powers—Question of fact—Criminal Procedure Code (Act X of* 1882), *s.* 435.] Under ss. 53, 54 of the Dekhan Agriculturists Relief Act (XVII of 1879) the Special Judge can interfere with an improper as well as an illegal decree or order. His revisional jurisdiction resembles that possessed by the High Court under the Code of Criminal Procedure (Act X of 1882), and ought, if it be held to include the power of setting aside the decision of a lower Court on the facts, to be exercised only in very exceptional cases. SHIDHU BIN SUBHANA JADHAV *v.* BALI BIN MURARI JADHAV.

[I. L. R. 15 Bom. 180

———, s. 56.—*Dekhan Agriculturists Relief Act Amendment Act (XXIII of* 1886), *s.* 9—*Proviso added to s.* 56 *of Act XVII of* 1879—*Its applicability to instruments executed before it came into force—Statute, construction of.*] The general rule is that Acts are prospective, not retrospective, in their operation. To this rule there are two exceptions, (*a*) when Acts are expressly declared to be retrospective; (*b*) when they only affect the procedure of the Court. The proviso added to s. 56 of the Dekhan Agriculturists Relief Act (XVII of 1879) by Act XXIII of 1886, is not retrospective in its operation, as it involves not merely a change of procedure, but also a change of existing rights. The plaintiff purchased a house from the defendant, who was an agriculturist, under a deed of sale dated 23rd June 1886. The deed was registered under the Registration Act (III of 1877). On the 1st December 1886, the plaintiff sued to recover possession of the house. The defendant pleaded that the sale-deed was invalid for want of consideration. Both the lower Courts rejected the claim on the ground that the sale-deed not having been executed according to the provisions of s. 56 of the Dekhan Agriculturists Relief Act (XVII of 1879) was inadmissible and inoperative. In second appeal it was contended for the plaintiff that, as the amending Act XXIII of 1886 came into force after the institution of the suit, but before the suit came to a hearing, the plaintiff was entitled to the benefit of the proviso added to s. 56 by the amending Act, whereby it was provided that s. 56 was not to apply to instruments which were duly registered under the Indian Registration Act (III of 1877):—*Held*, that the proviso to s. 65 of Act XXIII of 1886 did not apply, as it was not retrospective. JAVANMAL JITMAL *v.* MUKTABAI.

[I. L. R. 14 Bom 516

DELAY CAUSED BY ACT OF COURT.

See LIMITATION ACT, 1877, s. 22.

[I. L. R. 17 Bom. 29

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS.

[I. L. R. 17 Bom. 29

DELIVERY.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[I. L. R. 15 Bom. 338

DELIVERY ORDER.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[I. L. R. 21 Calc. 173

DEO ESTATES ACT (IX OF 1886), s. 1.

See CHOTA NAGPORE ENCUMBERED ESTATES ACT, s. 3

[I. L. R. 20 Calc. 609

See STATUTES, CONSTRUCTION OF.

[I L. R. 20 Calc. 609

DEPOSIT OF ARREARS OF RENT.

See BENGAL TENANCY ACT, s. 174.

[I. L. R. 18 Calc. 231, 255

DEPOSIT OF COSTS OF APPEAL.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE.

[I. L. R. 14 Mad. 391, 392 note

DEPOSIT OF TITLE-DEEDS.

See LIMITATION ACT, 1877, ART. 147.

[I. L. R. 14 Bom. 269

Equitable mortgage—Transfer of Property Act, s. 59—Deposit of title-deeds in Calcutta—Immoveable property in mofussil.] It is not necessary to the validity of a mortgage by deposit of title-deeds under s. 59 of the Transfer of Property Act (IV of 1882), that the property to which the title-deeds relate should be situated within the limits of one of the towns where such mortgages are allowed. *Varden Seth Sam* v. *Luckpathy Royjee Lallah*, 9 Moo. I. A. 303; and *Manekji Framji* v. *Rustomji Naserwanji Mistry*, I. L. R. 14 Bom. 269, referred to. MADHO DAS *v.* RAM KISHEN.

[I. L. R. 14 All. 238

DEPOSIT WITH BANK.

See CONTRACT—CONDITIONS PRECEDENT.

[I. L. R. 14 Bom. 498

DEPOSITARY.

See LIMITATION ACT, 1877, ART. 145.

[I. L. R. 18 Calc. 234

DEPOSITION SIGNED BY WITNESS.

See LIMITATION ACT, 1877, s. 19.

[I. L. R. 16 Mad. 220

DEPOSITIONS.

See CASES UNDER EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

DEPUTY COLLECTOR, JURISDICTION OF.

Madras Rent Recovery Act (Madras Act VIII of 1865), s. 49—Suit for restoration of specific moveable property.] A ryot brought a suit in the Court of a Deputy Collector as under the Rent Recovery Act, praying for the release from attachment and the restoration to him of certain moveable property, and for some other subsidiary relief:—*Held*, that the Deputy Collector had no jurisdiction to entertain the suit under the Rent Recovery Act, s. 49. RAJAH OF VENKATAGIRI *v.* YERRA REDDI.

[I. L. R. 16 Mad. 323

DEPUTY COMMISSIONER OF POLICE, POWER OF.

See CALCUTTA POLICE ACT, s. 5.

[I. L. R. 20 Calc. 670

DESERTION.

See BURMESE LAW—DIVORCE.

[I. L. R. 19 Calc. 469

See HINDU LAW—HUSBAND AND WIFE.

[I. L. R. 13 All. 126

DIRECTORS, REFUSAL OF, TO REGISTER SHARES.

See COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

[I. L. R. 16 Bom. 80, 398

DISABILITY TO CONTRACT.

See SPECIFIC PERFORMANCE—SPECIFIC PERFORMANCE ALLOWED.

[I. L. R. 17 Calc. 223

DISAFFECTION, EXCITING.

See PENAL CODE, s. 124A.

[I. L. R. 19 Calc. 35

DISAPPROBATION OF ACTS OF GOVERNMENT, EXPRESSION OF.

See PENAL CODE, s. 124A.

[I. L. R. 19 Calc. 35

DISCONTINUANCE OF POSSESSION.

See CASES UNDER LIMITATION ACT, 1877, ART. 142.

DISCOVERY.

See CASES UNDER INSPECTION OF DOCUMENTS.

See INTERROGATORIES.

[I. L. R. 17 Calc. 840

DISCRETION OF COURT.

See APPEAL—COSTS.
[I. L. R. 15 All. 333

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.
[I. L. R. 12 All. 436

See DECLARATORY DECREE, SUIT FOR—ADOPTIONS.
[I. L. R. 17 Calc. 933

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE — LOST OR DESTROYED DOCUMENTS.
[I. L. R. 19 Calc. 438

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED.
[I. L. R. 20 Calc. 360

See LIMITATION ACT, 1877, S. 5.
[I. L. R. 14 Mad. 81

See MINOR—CUSTODY OF MINORS.
[I. L. R. 12 All. 213

See OATHS ACT, S. 11.
[I. L. R. 14 All. 141

See PARDANASHIN WOMEN.
[I. L. R. 21 Calc. 588

See PARSIS.
[I. L. R. 17 Bom. 146

See PROBATE—TO WHOM GRANTED.
[I. L. R. 21 Calc. 195

See RECEIVER.
[I. L. R. 13 Mad. 390

See SANCTION TO PROSECUTION—DISCRETION IN GRANTING SANCTION.
[I. L. R. 15 Mad. 224

See SECURITY FOR COSTS—APPEALS.
[I. L. R. 17 Calc. 512, 516

See SPECIAL APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—WITNESSES.
[I. L. R. 20 Calc. 740

See WITNESS—SUMMONING AND ATTENDANCE OF WITNESSES.
[I. L. R. 20 Calc. 740

DISHONOUR.

See BILL OF EXCHANGE.
[I. L. R. 19 Calc. 146

——, Notice of.

See HUNDI.
[I. L. R. 14 Mad. 470

DISMISSAL OF SUIT.

See COURT-FEES ACT, SS. 10, AND 11.
[I. L. R. 12 All. 129

See COURT-FEES ACT, S. 28.
[I. L. R. 12 All. 129

See PAUPER SUIT—SUITS.
[I. L. R. 15 Bom. 77

See PRACTICE — CIVIL CASES — STAY OF PROCEEDINGS.
[I. L. R. 21 Calc. 561

DISQUALIFICATION.

—— of Assessor.

See LAND ACQUISITION ACT, S. 19.
[I. L. R. 17 Bom. 299

—— of Magistrate or Judge.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.
[I. L. R. 15 Mad. 83
[I. L. R. 15 All. 192
[I. L. R. 14 Bom. 572
[I. L. R. 20 Calc. 857

—— to inherit.

See ESTOPPEL—ESTOPPEL BY CONDUCT.
[I. L. R. 18 Calc. 341

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF INHERITANCE.
[I. L. R. 18 Calc. 111
[I. L. R. 12 All. 530

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN.
[I. L. R. 18 Calc. 327

See HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.
[I. L. R. 17 Calc. 674

DISTRAINT.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W.P.
[I. L. R. 12 All. 409

——, Notice of.

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 103.
[I. L. R. 14 Mad. 467

See THEFT.
[I. L. R. 16 Mad. 364

——, Power of.

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 103.
[I. L. R. 14 Mad. 467

——, Right of.

See MADRAS RENT RECOVERY ACT, S. 1.
[I. L. R. 16 Mad. 40

DISTRICT JUDGE, DUTY OF.

See TRANSFER OF CIVIL CASE.

[I. L. R. 14 All. 531

DISTRICT JUDGE, JURISDICTION OF.

See APPEAL—COSTS.

[I. L. R. 16 Bom. 241

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUIT.

[I. L. R. 17 Bom. 49

See APPEAL—N.-W. P. ACTS.

[I. L. R. 13 All. 364

See BENGAL TENANCY ACT, S. 93.

[I. L. R. 20 Calc. 881

See BOMBAY CIVIL COURTS ACT, S. 16.

[I. L. R. 16 Bom. 277

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 3.

[I. L. R. 16 Bom. 128, 183

See FALSE EVIDENCE.

[I. L. R. 20 Calc. 724

See LETTERS OF ADMINISTRATION.

[I. L. R. 17 Bom. 689

See PROBATE—JURISDICTION OF DISTRICT COURT.

[I. L. R. 17 Bom. 686

See RIGHT OF SUIT—CHARITIES.

[I. L. R. 14 Mad. 186
[I. L. R. 15 Mad. 241
[I. L. R. 15 Bom. 148

See VALUATION OF SUIT—APPEALS.

[I. L. R. 13 Mad. 520
[I. L. R. 14 Mad. 462
[I. L. R. 15 Mad. 69, 181
[I. L. R. 16 Mad. 326
[I. L. R. 13 All. 320

1.—*Civil Procedure Code Amendment Act* (*X of* 1888)—*Appeal from order passed after Act came into force in proceedings commenced before it was in operation.*] A District Judge has jurisdiction to hear the appeal from an order passed after the 1st of July 1888, under the Civil Procedure Code Amendment Act of 1888, although the execution proceedings in the course of which the order was made were commenced before that date. BAGAL CHUNDER MOOKERJEE *v.* RAMESHUR MUNDUL.

[I. L. R. 18 Calc. 496

2.—*Civil Procedure Code*, 1882, *s.* 15—*Jurisdiction of District Judge to try case which should have been instituted in Subordinate Judge's Court.*] S. 15 of the Civil Procedure Code does not prevent

DISTRICT JUDGE, JURISDICTION OF —*continued.*

a District Judge from trying a suit which ought properly to have been instituted in the Court of a Subordinate Judge. *Nidhi Lal* v. *Mazhar Husain*, I. L. R. 7 All. 230, and *Matra Mondal* v. *Hari Mohan Mullick*, I. L. R. 17 Calc. 155, followed. AUGUSTINE *v.* MEDLYCOTT.

[I. L. R. 15 Mad. 241

3.—*Civil Procedure Code*, 1882, *s.* 331—*Bombay Civil Courts Act* (*XIV of* 1869), *s.* 8—*Appeal from order under s.* 331.] *A* obtained a decree in the Court of a First Class Subordinate Judge for possession of property worth more than Rs. 5,000. In executing this decree against a portion of the property awarded, which was worth Rs. 420, *A* was resisted by *B*, who claimed to hold the property under a title adverse to the judgment-debtors. *B's* claim was thereupon numbered and registered as a suit under s. 331 of the Code of Civil Procedure (Act XIV of 1882). The First Class Subordinate Judge, who investigated the claim, ordered *B's* obstruction to be removed and the property to be put into *A's* possession. *B* appealed against this order:—*Held*, that the appeal lay to the District Judge under Act XIV of 1869, the subject-matter of the claim being less than Rs. 5,000. MOULAKHAN *v.* GORIKHAN.

[I. L. R. 14 Bom. 627

4.—*Bombay Civil Courts Act* (*XIV of* 1869), *s.* 17—*Reference by District Judge to Assistant Judge—Jurisdiction of Assistant Judge on case so referred.*] A District Judge referred for trial an appeal to his Assistant Judge under s. 17 of the Bombay Civil Courts Act (XIV of 1869). The Assistant Judge dismissed the appeal for default of the appellant's (defendant's) appearance on the day fixed for hearing. An application was afterwards made to the Assistant Judge for the readmission of the appeal, but he refused the application. A similar application was then made to the District Judge. He granted the application and ordered the appeal to be readmitted to the file. The appeal was then heard and decided by the Assistant Judge, who reversed the lower Court's decree. On appeal by the plaintiff to the High Court:—*Held*, that the order of the District Judge readmitting the appeal was *ultra vires*. By the reference under s. 17 of the Bombay Civil Courts Act XIV of 1869 the Assistant Judge acquired full jurisdiction to try the appeal according to the procedure laid down by the Civil Procedure Code of 1882. The Assistant Judge had jurisdiction, under s. 558 of the Code, to entertain the application for readmission, and his order refusing to readmit was not subject to reversal or review by the District Judge. The order of the District Judge readmitting the appeal was made without jurisdiction, and the proceedings subsequent thereto were also without jurisdiction and invalid. SAKHARAM LAKSHMAN *v.* GOVIND JOTI.

[I. L. R. 15 Bom. 107

5.—*Act IX of* 1861, *ss.* 1, 3, 4—*Civil Procedure Code*, *s.* 17.] An application was made to the District Judge of Allahabad, under s. 1 of Act

IX of 1861, by a relative of a minor, alleging that the minor had, by the acts and with the connivance and assistance of the defendants, at Allahabad, been removed from the plaintiff's custody and guardianship at Allahabad, and praying for the minor's restoration thereto. At the time when the application was made, the minor was at Lahore:—*Held* that, under ss. 1 and 4 of Act IX of 1861, read with s. 17 of the Civil Procedure Code, the application was cognizable by the District Judge of Allahabad, where the cause of action arose; and that, even apart from s. 17 of the Code, the minor having been in the custody and guardianship of a person within the jurisdiction of the Judge of Allahabad, that officer had full jurisdiction to deal with the application SARAT CHUNDRA CHAKARBATI *v.* FORMAN.

[I. L. R. 12 All. 213

6.—*Bengal, N.-W. P. and Assam Civil Courts Act, ss.* 23, 24—*Exercise by Subordinate Judge of jurisdiction of District Court—Appeal—Act XL of* 1858.] The words in s. 24 of the Bengal Civil Courts Act (XII of 1887) "subject to the rules applicable to like proceedings when disposed of by the District Judge," include the rules relating to appeals. Therefore orders passed under that section by a Subordinate Judge in proceedings under the Bengal Minors Act (XL of 1858) transferred to him under s. 23 (2) (*b*) of the former Act, are appealable to the High Court and not to the Court of the District Judge. SOHNA *v.* KHALAK SINGH.

[I. L. R. 13 All. 78

7.—*Land Acquisition Act* (*X of* 1870), *s.* 55—*Reference by a Collector.*] A Collector is not competent to refer, nor a District Judge to decide, any question arising under Land Acquisition Act, s. 55. RAMALAKSHMI *v.* COLLECTOR OF KISTNA.

[I. L. R. 16 Mad. 321

8.—*Guardians and Wards Act* (*VIII of* 1890), *ss.* 41 *and* 51—*Applicability to guardians who had ceased to be such before the Act came into force.*] The Guardians and Wards Act (VIII of 1890) does not apply to guardians whose powers had ceased by reason of their wards having attained majority, or otherwise, prior to the passing of the Act. The word 'guardian' in s. 51 of the Act means a guardian who was such at the time the Act came into force. *A* was appointed a guardian of *B*'s property under the Bombay Minors Act, XX of 1864. *B* attained majority in 1886. In 1892 *B* applied to the District Judge for an order directing *A* to deliver to *B* his property together with the accounts relating thereto. The District Judge made the order, as asked for, under s. 41, cl. 3 of Act VIII of 1890:—*Held*, that the District Judge had no jurisdiction under Act VIII of 1890 to make the order in question, as *A* had ceased to be a guardian before the Act came into force. VALLABDAS HIRACHAND *v.* KRISHNABAI.

[I. L. R. 17 Bom. 566

DIVESTING OF ESTATE.

See HINDU LAW — ADOPTION — EFFECT OF ADOPTION.

[I. L. R. 18 Calc. 69, 385

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

[I. L. R. 19 Calc. 289

DIVORCE.

See BURMESE LAW—DIVORCE.

[I. L. R. 19 Calc. 469

——, Plea of.

See MAINTENANCE, ORDER OF CRIMINAL COURT FOR.

[I. L. R. 15 All. 143

——, Suit for.

See HIGH COURT, JURISDICTION OF — HIGH COURT, BOMBAY— CIVIL.

[I. L. R. 16 Bom. 136

DIVORCE ACT (IV OF 1869).

—*Evidence of marriage.*] The bare assertion of a petitioner under Divorce Act, 1869, is not sufficient proof of her marriage to satisfy the requirements of that Act. RATHNAMMAL *v.* MANIKKAM.

[I. L. R. 16 Mad. 455

1.—s. 2.—*Application of Act—Non-Christian marriage — Conversion to Christianity — Native Converts Marriage Dissolution Act* (*XXI of* 1866), *ss.* 4, 5, 7, 8, 9, 10, 15, 16.] The petitioner and the respondent were married while professing the Hindu faith, and afterwards became converts to Christianity. The petitioner subsequently applied for dissolution of the marriage on the ground of his wife's adultery:— *Held* that, being a person professing Christianity at the time of presenting the petition, he was entitled to a dissolution of the marriage under the provisions of the Indian Divorce Act (IV of 1869). It is clear from the provisions of the Native Converts Marriage Dissolution Act (XXI of 1866) that a non-Christian marriage is not dissolved by the mere fact of the conversion of one or both of the parties to Christianity, and may therefore be dissolved in accordance with the provisions of Act IV of 1869. GOBARDHAN DASS *v.* JASADAMONI DASSI.

[I. L. R. 18 Calc. 252

2.—s. 2.—*Native Christian—Hindu convert to Christianity.*] A pariah, who had been converted to Christianity, presented a petition of divorce under Act IV of 1869 on the ground of adultery committed by his wife before his conversion:— *Held*, that the Court had no jurisdiction to entertain the petition. PERIANAYAKAM *v.* POTTUKANNI.

[I. L. R. 14 Mad. 382

DIVORCE ACT (IV OF 1869)—*continued.*

——, s. 14, and ss. 3 and 17.—*Decree based merely on admissions and without recording evidence—Collusion.*] A decree for dissolution of marriage cannot be made merely on admissions and without recording any evidence. BAI KANKU *v.* SHIVA TOYA.

[I. L. R. 17 Bom. 624

1.—s. 16.—*Divorce, suit for—Decree absolute—Notice of application to make decree absolute—Practice.*] When a decree *nisi* has been served on the respondent in a divorce suit, it is not necessary to give him notice of an application to make such decree absolute. GOMES *v.* GOMES.

[I. L. R. 18 Calc. 443

2.—s. 16.—*Decree, absolute application for—Decree nisi non-service of—Notice of application—Practice.*] In an application to have a decree *nisi* made absolute, where it appeared that the decree had been passed *ex parte*, after the original summons had been personally served on the respondent, and that, owing to this, the petitioner being unable to discover the whereabouts of the respondent who had left Calcutta immediately after the decree was passed, no copy of the decree had been served on him, or notice of the application given him:—*Held*, that sufficient cause was shown for the decree being made absolute, notwithstanding it had not been served, or notice of the application given, and the decree was made absolute accordingly. HUNTER *v.* HUNTER.

[I. L. R. 18 Calc. 539

3.—s. 16, cl. (c).—*Intervenor—Procedure after decree nisi on application by respondent for liberty to intervene.*] A wife sued for dissolution of her marriage on the grounds of her husband's adultery and cruelty. The respondent did not appear or file an answer, and the case was heard *ex parte* and resulted in a decree *nisi* being passed. Subsequently, and before the decree was made absolute, the respondent applied for liberty to intervene under the provisions of cl. (*c*), s. 16 of the Divorce Act, the application being based on affidavits alleging, *inter alia*, collusion on the part of the petitioner:—*Held*, following *King* v. *King*, I. L. R. 6 Bom. 416, that the respondent could not be allowed to intervene or be heard when the decree came on to be made absolute, but that the affidavits should be filed, and that notice should be given to the petitioner that the decree would not be made absolute until the matter set out in the affidavits as regarded the collusion had been cleared up. STEPHEN *v.* STEPHEN.

[I. L. R. 17 Calc. 570

——, ss. 18, 19 (2).

See MARRIAGE.

[I. L. R. 17 Calc. 324

——, s. 36.—*Alimony pendente lite—Nett income—Allowable deductions—Change of circumstances.*] A petition by a wife—petitioner in the one and respondent in the other of two cross-suits (matrimonial)—for an increase of alimony was treated by consent on appeal as a petition for

DIVORCE ACT (IV OF 1869)—*concluded.*

alimony. It appeared that the respondent was in receipt of a salary from Government which was subject to deductions on account of the pension and annuity funds, that his circumstances were involved, and he had agreed with his creditors to discharge his liabilities by certain instalments, that as part of such agreement he was keeping up a policy of insurance on his life, and that he was maintaining and educating three children in England, but that his salary had increased since the order first made for alimony:—*Held*, that the respondent was entitled as of right to have only the deductions on account of pension and annuity funds taken into consideration in the computation of his nett income. In this case, however, the Court in the exercise of its discretion took into consideration the expenses the respondent was put to in maintaining his children, and also the arrangement he had made for liquidating his debts. *Quære.*—Whether the Court has power to increase or diminish an allotment of alimony made *pedente lite* on account of change of circumstances? R. *v.* R.

[I. L. R. 14 Mad. 88

——, s. 42.

See CUSTODY OF CHILD.

[I. L. R. 18 Calc. 473

DOCUMENT.

——, Alteration of—

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.

[I. L. R. 15 Mad. 70

[I. L. R. 15 Bom. 44

——, Construction of—

See LICENSE.

[I. L. R. 16 Mad. 280

——, Filed with plaint, copy of—

See STAMP ACT, 1879, SCH. I, ART. 22.

[I. L. R. 15 Bom. 687

——, Loss of—

See ONUS PROBANDI—POSSESSION AND PROOF OF TITLE.

[I. L. R. 18 Calc. 201

——, Suit to cancel or set aside.

See CASES UNDER LIMITATION ACT, 1877, ART. 91.

See VALUATION OF SUIT—SUITS.

[I. L. R. 15 Mad. 294

——, Summons to produce.

See INSPECTION OF DOCUMENTS—CRIMINAL CASES.

[I. L. R. 19 Calc. 52

DOCUMENTS, AFFIDAVIT OF.

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

[I. L. R. 20 Calc. 587

DOMICILE.

See MARRIAGE.

[I. L. R. 17 Calc. 324

DONATIO MORTIS CAUSA.

See TRUST.

[I. L. R. 17 Calc. 620

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See MAHOMEDAN LAW—DOWER.

See RESTITUTION OF CONJUGAL RIGHTS.

[I. L. R. 17 Calc. 670

DRAWBACK.

See BOMBAY MUNICIPAL ACT, 1888, S. 158.

[I. L. R. 17 Bom. 394

DRAWER, LIABILITY OF.

See BILL OF EXCHANGE.

[I. L. R. 19 Calc. 146

[I. L. R. 15 Bom. 267

DUMBNESS.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 18 Calc. 341

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN.

[I. L. R. 18 Calc. 327

DURESS.

See WILL—CONSTRUCTION.

[I. L. R. 20 Calc. 15

EASEMENT.

See LICENSE.

[I. L. R. 16 Mad. 280

See LIMITATION ACT, 1877, S. 26.

[I. L. R. 14 Bom. 213

[I. L. R. 16 Bom. 592

See LIMITATION ACT, 1877, ART. 144—INTEREST IN IMMOVEABLE PROPERTY.

[I. L. R. 16 Bom. 353

See CASES UNDER PRESCRIPTION—EASEMENTS.

See RIGHT OF WAY.

[I. L. R. 16 Bom. 552

[I. L. R. 17 Bom. 648

[I. L. R. 15 All. 270

—*Easements Act* (*V of* 1882), *s.* 15—*Kumki right in South Canara—Possession, right to.*] The *kumki* right of landholders in South Canara is not an easement, but a right exercised over Government waste by permission of Government, and it does not entitle the landholder to a decree for possession. NAGAPPA *v.* SUBBA.

[I. L. R. 16 Mad. 304

EASEMENTS ACT (V OF 1882).

See PRESCRIPTION—EASEMENTS—RIGHT OF WAY.

[I. L. R. 14 All. 185

See RIGHT OF WAY.

[I. L. R. 15 All. 270

——, S. 24.

See PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.

[I. L. R. 15 Mad. 286

——, SS. 52, 56.

See LICENSE.

[I. L. R. 16 Mad. 280

EJECTMENT.

——, Decree for, and for mesne profits.

See VALUATION OF SUIT—APPEALS.

[I. L. R. 16 Mad. 310

——, Liability to.

See BENGAL TENANCY ACT, S. 3.

[I. L. R. 17 Calc. 45

See BENGAL TENANCY ACT, S. 5.

[I. L. R. 20 Calc. 708

——, Suit for.

See BENGAL TENANCY ACT, S. 188.

[I. L. R. 19 Calc. 541

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 3.

[I. L. R. 16 Bom. 183

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 15 All. 189

See HINDU LAW—PARTITION—PARTITION OF PORTION OF PROPERTY.

[I. L. R. 16 Mad. 98

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.W.P.

[I. L. R. 12 All. 419

[I. L. R. 14 All. 223

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY—ERECTION OF BUILDINGS.

[I. L. R. 15 Bom. 71

See CASES UNDER LANDLORD AND TENANT—EJECTMENT.

See LIMITATION ACT, 1877, ART. 47.

[I. L. R. 19 Calc. 646

See ONUS PROBANDI—LANDLORD AND TENANT.

[I. L. R. 15 Mad. 95

[I. L. R. 16 Mad 271

EJECTMENT—*concluded.*

See ONUS PROBANDI—POSSESSION AND PROOF OF TITLE.

[I. L. R. 12 All. 46

See RECEIVER.

[I. L. R. 18 Calc. 477

See SPECIFIC RELIEF ACT, S. 9.

[I. L. R. 13 All. 537

See VALUATION OF SUIT—APPEALS.

[I. L. R. 15 All. 363

See VALUATION OF SUIT—SUITS.

[I. L. R. 15 All. 63

1.—*Right to bring ejectment suit—Suit by lessee while lessor is out of possession.*] A lessee is entitled to maintain a suit for ejectment against the party in possession, notwithstanding the fact that, at the date of the lease, his lessor was not in possession of the property. *Prankrishna Dey* v. *Biswambhar Sein*, 2 B. L. R. A. C. 207, and *Tiery* v. *Kristo Mohun Bose*, L. R. 1 I. A. 76, referred to. ACHAYYA *v.* HANUMANTRAYUDU.

[I. L. R. 14 Mad. 269

2.—*Right of occupancy, transfer of—Suit for possession by one wrong-doer against another—First and second mortgages of occupancy holding—Suit by second mortgagee to eject first mortgagee in possession.*] Where an occupancy holding was mortgaged under two successive mortgage-deeds to different parties, and the mortgagees under the first mortgage having been put in possession, the mortgagees under the second mortgage sued to eject them:—*Held*, that both parties being wrong-doers, inasmuch as both mortgages were illegal, the defendants, who were in possession, had a right, as against the plaintiffs, to retain possession. USUF KHAN *v.* SARVAN.

[I. L. R. 13 All. 403

ELECTION.

——, Doctrine of.

See HINDU LAW—WILL—CONSTRUCTION—ELECTION, DOCTRINE OF.

[I. L. R. 14 Bom. 438

See HINDU LAW—WILL—CONSTRUCTION—SURVIVORSHIP.

[I. L. R. 15 Bom. 443

——, List of candidates at.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[I. L. R. 19 Calc. 192, 195 note, 198

EMBLEMENTS.

See SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHTS OF—EMBLEMENTS.

[I. L. R. 13 Mad. 15

ENCROACHMENT.

See LANDLORD AND TENANT—ACCRETION TO TENURE.

[I. L. R. 16 Bom. 552

——, on vacant land.

See POSSESSION—ADVERSE POSSESSION.

[I. L. R. 16 Bom. 338

See RIGHT OF WAY.

[I. L. R. 17 Bom. 648

—*Legal rights of owner of land—Owner not compellable to accept compensation instead of removal of encroachment.*] In a suit to recover land adjacent to a temple belonging to the defendants, on which land the defendants had encroached by building verandahs, the lower Courts found that the land sued for was the property of the plaintiff subject to the defendants' right of access to the temple, and directed the defendants to pay compensation to the plaintiff for the encroachment. The plaintiff appealed to the High Court:—*Held*, that the land being found to be the plaintiff's, the Courts could not compel him to part with his legal rights and accept compensation against his will, however reasonable it might appear to be. The defendants were accordingly ordered to remove the verandahs complained of and to restore possession of the land to the plaintiff. GOVIND VENKAJI *v.* SADASHIV BHARMA SHET.

[I. L. R. 17 Bom. 771

ENDORSEMENT.

See BILL OF EXCHANGE.

[I. L. R. 15 Bom. 267

See EVIDENCE — PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[I. L. R. 14 Bom. 472

See REGISTRATION ACT, S. 17.

[I. L. R. 14 Bom. 472

—— of transfer on bond.

See STAMP ACT, 1879, S. 13.

[I. L. R. 17 Bom. 687

ENDOWMENT.

See ACT XX OF 1863.

[I. L. R. 19 Calc. 275

[I. L. R. 14 Mad. 103

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R. 15 Bom. 625

See HINDU LAW—CUSTOM—ENDOWMENT.

[I. L. R. 14 Bom. 90

See CASES UNDER HINDU LAW—ENDOWMENT.

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

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See MALABAR LAW—ENDOWMENT.

[I. L. R. 14 Mad. 153

See ONUS PROBANDI—DEEDS, SUITS TO ENFORCE OR SET ASIDE.

[I. L. R. 18 Calc. 545

See RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO.

[I. L. R. 13 Mad. 277

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—ENDOWMENT.

[I. L. R. 14 All. 413

See TRUST.

[I. L. R. 15 Bom. 625

——, Enfranchisement of.

See RIGHT OF SUIT—OFFICE OR EMOLUMENT.

[I. L. R. 15 Mad. 284

——, Representation of.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R. 20 Calc. 103

—*Succession in management of muth—Religious Endowments Act (XX of* 1863), *ss.* 14, 18—*Want of asceticism of paradesi—Removal of paradesi—Form of decree—Civil Procedure Code, ss.* 13, 43, 539—*Right of suit—Res Judicata—Relinquishment or omission to sue for portion of claim.*] The plaintiff, the zemindar of Sivagunga, sued in a Subordinate Court to remove the defendant from the office of head of a *muth*. The defendant was a married man living with his wives and children, whom he maintained with the produce of the property of the *muth*, and it appeared that he had failed to perform the ceremonies of the institution. The *muth* in question came into existence under a deed of endowment or "charity grant," whereby the first zemindar of Sivagunga granted land to his *guru* for the erection and maintenance of a *muth* and the performance of certain religious exercises in perpetuity, and provided that the head of the *muth* should be of the line of disciples of the original grantee whose spiritual family he desired to perpetuate. In 1867 a predecessor in title of the plaintiff had sued unsuccessfully to recover certain property of the *muth* from the defendant, alleging another cause of action than his *status* as a married man and his misappropriation of the *muth* property; and in that suit it was established that the head of the *muth* for the time being had the right to appoint his successor and that such appointment was not subject to confirmation by the zemindar. No sanction had been obtained for the institution of the present suit. It appeared that the trusts of the *muth* had been violated and the income misapplied, and that there was no qualified disciple

ENDOWMENT—*concluded.*

in whom the right of succession had vested, and that the members of the plaintiff's family were the only persons interested in the appointment:—*Held*, (1) that the jurisdiction of the Subordinate Court was not ousted by Act XX of 1863, since the trusts of the institution were in the nature of private trusts; (2) that sanction under s. 539 of the Civil Procedure Code was not a prerequisite of the suit for the same reason; (3) that the suit was not barred by limitation, its object being to prevent a specific endowment from being diverted from its legitimate object and to re-attach it to that object; (4) that the suit was not barred under s. 13 or s. 43 of the Civil Procedure Code; (5) that the proper decree was (1) to declare the plaintiff's right to appoint a qualified person with the concurrence of the rest of his family; (2) to direct him to do so within a given time, failing which the suit should stand dismissed with costs. If such appointment was made, notice should be given to the other members of the plaintiff's family before it was confirmed: if such appointment were confirmed, the property should be directed to be delivered to the person appointed to be administered in accordance with the trusts and usage of the *muth*. *Semble:* that the *paradesi* or head of the *muth* might be a married man, provided he had been duly initiated. SATHAPPAYYAR *v.* PERIASAMI.

[I. L. R. 14 Mad. 1

ENGLISH LAW.

See LIMITATION ACT, 1877, s. 26.

[I. L. R. 14 Bom. 213

——, Modification of.

See RIGHT OF WAY.

[I. L. R. 16 Bom. 552

1.—*Construction of Statutes—Rule as to Statutes affecting the Crown—Profit à prendre—Right of pasturage in Bombay Presidency—Prescription.*] The rule of construction according to which the Crown is not affected by a Statute, unless specially named in it, applies to India. The rule of English law that a claim to a profit *à prendre* cannot be acquired by the inhabitants of a village either by custom or prescription, does not apply to a right of pasturage claimed by a village in the Presidency of Bombay as against the Government. The right of free pasturage has always been recognized as a right belonging to certain villages, and must have been acquired by custom or prescription. SECRETARY OF STATE FOR INDIA *v.* MATHURABHAI.

[I. L. R. 14 Bom. 213

2.—*Law of attainder—Law in force in India.*] *Per cur.*—The English law of attainder did not apply in India in 1783. PAPAMMA *v.* VENKATADRI APPA RAU. NARASIMHA APPA RAU *v.* VENKATADRI APPA RAU.

[I. L. R. 16 Mad. 384

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See LANDLORD AND TENANT—NATURE OF TENANCY.

[I. L. R. 17 Bom. 475

See SERVICE TENURE.

[I. L. R. 14 Mad. 365

———, Agreement for.

See BENGAL TENANCY ACT, s. 29.

[I. L. R. 18 Calc. 333

———, Suit for.

See BENGAL RENT ACT, 1869, s. 31.

[I. L. R. 20 Calc. 498

See BENGAL TENANCY ACT, s. 188.

[I. L. R. 17 Calc. 695
[I. L. R. 19 Calc. 593

See BOMBAY LAND REVENUE ACT, ss. 85, 86.

[I. L. R. 16 Bom. 586

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT.

[I. L. R. 20 Calc. 498

(1) LIABILITY TO ENHANCEMENT.

—*Mirasidars—Right of inamdar to enhance their rent—Custom.*] *Mirasidars* in an *inam* village cannot always claim to hold at a fixed rent. An *inamdar* can enhance their rents within the limits of custom. VISHVANATH BHIKAJI *v.* DHONDAPPA.

[I. L. R. 17 Bom. 475

EQUITABLE MORTGAGE.

See DEPOSIT OF TITLE DEEDS.

[I. L. R. 14 All. 238

1.—*Agreement creating charge on proceeds of an intended appeal—Property substituted by agreement between decree-holder and third parties for such proceeds—Right to follow such proceeds in hands of such third parties—Notice.*] A judgment-debtor paid into Court the sum due under a decree passed against him on appeal. The expenses of the appeal had been advanced by the present plaintiff under an agreement signed by the appellants, which provided as follows: "You should "first take out of the amount which may be collected from the defendants the whole of the amount "incurred on account of the said costs." Persons holding a decree against the successful appellants sought to enforce it against the money in Court having notice of the above agreement. Their application was first resisted by the successful appellants on the ground that the money was charity property, but subsequently it was consented to, and the money was paid out to them on their substituting certain other property for the purposes of the charity. The present plaintiff, having obtained a decree on the above agreement, now sought to execute it against the money which had been so paid out:—*Held*, that the above agreement constituted a valid charge on the funds realized under the appellate decree, which charge was binding on the payees of the money and the plaintiff was not bound to proceed against the property substituted by them for the purposes of the charity. PALANIAPPA *v.* LAKSHMANAN.

[I. L. R. 16 Mad. 429

2.—*Equitable charge on property purchased.—A charge created in favour of the lender of the purchase-money.*] By the acts of the parties, and their relations to one another, money borrowed by an agent for a principal for the purchase of property was rendered a charge upon the latter in the principal's hands, he being the real purchaser. The lender of money, which he advanced to the nominal purchaser of property, who was the agent of the real purchaser, made the advance with the knowledge that it was for the principal's purposes, the latter only using the agent's name in the purchase. The nominal purchaser then executed a deed purporting to hypothecate the property as security for the loan. The lender, not having been paid, obtained a money decree against the nominal purchaser, and, bringing the property to a Court-sale, bought it himself. He could not, however, obtain entry of his name in the Collectorate books, on the opposition of the real purchaser, and a suit brought by him for a declaration of his title, and his right to possession, against the nominal purchaser, was dismissed. Afterwards, in the present suit, which the lender brought against both the real and the nominal purchasers, it was *held* that although, in regard to the previous judgment, it might be difficult to decide that the deed itself constituted a valid hypothecation, the facts of the case were sufficient to show that the lender of the money was entitled to a declaration that the advance of money for the purchase formed an equitable charge upon the property against the real purchaser. BHAGWATI PRASAD *v.* RADHA KISHEN SEWAK PANDE.

[I. L. R. 15 All. 304

EQUITY OF REDEMPTION.

See POSSESSION—ADVERSE POSSESSION.

[I. L. R. 14 Bom. 176

———. Assignment of.

See CHAMPERTY.

[I. L. R. 14 Bom. 72

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION.

[I. L. R. 16 Bom. 599

———, Partition of.

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION.

[I. L. R. 15 Bom. 186

EQUITY OF REDEMPTION—*concluded.*

——, Purchase of, by mortgagee.

See LIMITATION ACT, 1877, ART. 142.

[I. L. R. 14 Bom. 279

See MORTGAGE—REDEMPTION — RIGHT OF REDEMPTION.

[I. L. R. 15 Bom. 24

ESCAPE FROM CUSTODY.

—*Penal Code* (*Act XLV of* 1860), *s.* 224.—*Escape where detention is not for an offence.*] An offence was committed in 1866. In 1893 a person of the same name as the offender was arrested, tried, and acquitted. Whilst under arrest the accused escaped from custody:—*Held*, that he was not liable to conviction under s. 224 of the Penal Code. An escape from custody when such detention is not for an offence is not punishable under that section. GANGA CHARAN SINGH *v.* QUEEN-EMPRESS.

[I. L. R. 21 Calc. 337

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[I. L. R. 14 All. 362

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[I. L. R. 16 Bom. 389

See DEBTOR AND CREDITOR.

[I. L. R. 15 Mad. 362

See HINDU LAW—ADOPTION—WHO MAY BE ADOPTED.

[I. L. R. 13 Mad. 128

See HINDU LAW — JOINT-FAMILY — NATURE OF, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY.

[I. L. R. 15 Bom. 32

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[I. L. R. 17 Bom. 736

See LIMITATION ACT, 1877, ART. 179—STEP IN AID OF EXECUTION.

[I. L. R. 15 Bom. 242, 245

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[I. L. R. 18 Calc. 188

See MORTGAGE — REDEMPTION — REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

[I. L. R. 14 Bom. 78

ESTOPPEL—*continued.*

See MORTGAGE—SALE OF MORTGAGED PROPERTY — RIGHTS OF MORTGAGEES.

[I. L. R. 14 Bom. 506

See CASES UNDER RES JUDICATA.

See VARIANCE BETWEEN PLEADING AND PROOF.

[I. L. R. 20 Calc. 1

——, of minor by act of guardian.

See LAND ACQUISITION ACT, s. 19.

[I. L. R. 17 Bom. 299

(1) DENIAL OF TITLE.

1.—*Landlord and tenant — Collusion.*] The plaintiff in an ejectment suit had established in a former suit that land formerly the property of the second defendant's father had been sold under a decree and purchased *benami* for him (the plaintiff), and that a rent agreement in respect of the same lands entered into between the ostensible purchaser and the first defendant had also been entered into by the former on his behalf: and possession had been formally delivered to the plaintiff under process of Court. It now appeared that the second defendant, who contested the validity as against him of the decree under which the land was sold, having withdrawn a suit filed by him to declare the sale invalid as against him after his father's death, had colluded with the first defendant and collected rent from him:—*Held*, that the second defendant having come in by collusion with the first defendant was precluded from denying the plaintiff's title and was liable to the plaintiff for the rent collected by him from the first defendant. PASUPATI *v.* NARAYANA.

[I. L. R. 13 Mad. 335

2.—*Mortgagor and mortgagee.*] The *karnavan* of a Malabar *tarwad* having the *jenm* title to certain land and holding the *uraima* right in a certain public *devasom* to which other land belonged, demised lands of both descriptions on *kanom* to the defendants' *tarwad*, and subsequently executed to the plaintiff a *melkanom* of the first-mentioned land and purported to sell to him the *jenm* title to the last-mentioned land. In a suit brought by the plaintiff to redeem the *kanom*, and to recover arrears of rent:—*Held*, that the defendants were not estopped from denying the plaintiff's right to redeem on the ground that he did not represent the *devasom*; and that the plaintiff who had denied the title of the *devasom* in the Court of First Instance was not entitled to redeem the *kanom* as a whole, by virtue of his admitted title to part of the premises comprised in it. KONNA PANIKAR *v.* KARUNAKARA.

[I. L. R. 16 Mad. 328

ESTOPPEL—*continued.*

(2) ESTOPPEL BY DEEDS AND OTHER DOCUMENTS.

3.—*Suit on a document executed by defendant in which he was described as a trader—Plea in suit that he was an agriculturist—Dekhan Agriculturists Relief Act (XVII of* 1879.] The mere fact that the defendant described himself in the instrument, on which the suit was brought, as a trader, would not of itself estop him from pleading at the trial that he was an agriculturist, and entitled to the protection of the Dekhan Agriculturists Relief Act. There must be evidence to show that by describing himself as a "trader" he represented himself as a trader, and intended that that representation should be acted on by the plaintiff. KADAPPA *v.* MARTANDA.

[I. L. R. 17 Bom. 227

(3) ESTOPPEL BY JUDGMENT.

4.—*Civil Procedure Code, s.* 13, *expl. II.—Execution of decree—Principle of res judicata as applied to execution-proceedings—Decision not in another suit but in same suit.*] Where a person on his own application was added as a party respondent to an appeal, and on the case on appeal being remanded under s. 562 of the Code of Civil Procedure for re-trial on the merits, practically took no steps whatever to defend the suit:—*Held,* that he could not afterwards plead, by way of objection to execution of the decree, matters which ought to have formed part of his defence to the suit, had he chosen to defend it. *Ram Kirpal* v. *Rup Kuari,* I. L. R. 6 All. 269, referred to. KISHAN SAHAI *v.* ALADAD KHAN.

[I. L. R. 14 All. 64

(4) ESTOPPEL BY CONDUCT.

5.—*Mortgagee purchasing at sale in execution of his decree on mortgage—Estoppel operative against mortgagor.*] A mortgagee who has purchased at the sale in execution of his decree on the mortgage is bound by an estoppel that would have bound his mortgagor. *Poresh Nath Mukherjee* v. *Anath Nath Deb,* I. L. R. 9 Calc. 265; L. R. 9 I. A. 147, followed. KISHORY MOHUN ROY *v.* MAHOMED MUJAFFAR HOSSEIN.

[I. L. R. 18 Calc. 188

6.—*Disqualification of a brother to share—Intention as evidenced by conduct—Waiver of rights—Hindu law—Inheritance—Mitakshara family.*] Between the two surviving brothers of a Mitakshara family, the action of the elder to the younger, who had been born deaf and dumb, was such as to recognise for some years that the latter had a joint interest in the family property. The proper inference to be drawn from this was that the elder treated his brother as a member of the family, and entitled to equal rights until it had become clear that his disqualification would never be removed by his being cured. Their Lordships would not infer that there was an intention shown by the acts of the elder to waive the rights accruing to him in consequence of this disqualification, nor

ESTOPPEL—*continued.*

(4) ESTOPPEL BY CONDUCT—*continued.*

would they hold that his acts operated to create a new title in the younger LALA MUDDUN GOPAL LAL *v.* KHIKHINDA KOER.

[I. L. R. 18 Calc. 341
[L. R. 18 I. A. 9

7.—*Suit on judgment of Foreign Court—Waiver of objection to jurisdiction.*] In a suit in a Foreign Court where the defendant took no objection to the jurisdiction but appeared by an agent and defended the suit on the merits:—*Held,* that he must be held to have waived the jurisdiction; and in a suit brought on the judgment of the Foreign Court, he was estopped from taking any exception to the jurisdiction. FAZAL SHAU KHAN *v.* GAFAR KHAN.

[I. L. R. 15 Mad. 82

8.—*Evidence Act (I of* 1872), *s.* 115—*Execution-purchaser without notice of mortgage.*] The plaintiff sued to realise his security under a mortgage executed to him by defendant No. 1, by sale of the mortgaged premises which were in the possession of defendants Nos. 2 and 3. It appeared that the plaintiff had previously attached and brought to sale the mortgaged premises in execution of a decree against defendant No. 1, and that the other defendants had purchased at the Court-sale, without notice of the plaintiff's mortgage, which was not referred to in the attachment lists or sale certificates:—*Held,* that the plaintiff was estopped from setting up his present claim. JAGANATHA *v.* GANGI REDDI.

[I. L. R. 15 Mad. 303

9.—*Evidence Act (I of* 1872) *s.* 115.—*Omission to give notice of prior encumbrance to executing decree-holder—Subsequent suit to enforce encumbrance.*] A hypothecation bond executed in 1878 by the husband (deceased) of defendant No. 1 to secure a debt due by him to a partner of the plaintiff was assigned to the latter in 1888. In 1882 the plaintiff, who was aware of the existence of this instrument, brought the land comprised in it to sale in execution of a money-decree obtained by him against the executant, and defendant No. 3 became the purchaser. At the time of the sale the plaintiff gave no notice of the existence of the encumbrance. In a suit to recover the principal and interest due on the hypothecation bond:—*Held,* that the plaintiff was estopped from recovering the secured debt against the land. KASTURI *v.* VENKATACHALAPATHI.

[I. L. R. 15 Mad. 412

10.—*Evidence Act, s.* 115—*Hindu law—Adoption.*] A Hindu widow, professing to have authority from her husband to do so, took the second defendant in adoption, brought him up as her adopted son, and permitted him to perform the funeral ceremonies of her husband. Land to which she otherwise would have been entitled was attached in execution of a decree against defendant No. 2. She now sued to release the attachment,

ESTOPPEL—*continued.*

(4) ESTOPPEL BY CONDUCT—*continued.*

alleging the adoption was bad, as having been unauthorised:—*Held*, that the plaintiff was estopped from raising this contention. KANNAMMAL *v.* VIRASAMI.

[I. L. R. 15 Mad. 486

11.—*Admission—Conclusive proof of adoption—Evidence Act (I of 1872), ss. 31, 115—Description of person as adopted son.*] *A*, a Hindu, died leaving him surviving a mother *B*, and three sisters. *A* had a brother *P*, who had been given in adoption to his maternal uncle *R*. On *A's* death his property devolved on his mother *B*. *B* mortgaged the property to the defendant. The mortgaged-bond was attested by *P*, who described himself as the adopted son of *R*. The defendant obtained a decree on the mortgage, and himself became the auction-purchaser at the execution-sale. Thereupon *A's* sisters sued, as reversionary heirs, for a declaration that the sale to the defendant was valid only to the extent of *B's* life-interest in the property sold. The defendant pleaded that *P's* adoption was invalid, that on *A's* death the property vested in *P*, and that the plaintiffs had, therefore, no interest in the property in dispute. The Court of First Instance allowed these pleas and dismissed the suit. The Appellate Court held that the description in the mortgage-bond, that *P* was the adopted son of *R*, amounted to an admission of the adoption by the defendant (mortgagee), and that he was, therefore, estopped from contesting the adoption:—*Held*, that the defendant was not estopped. The mere fact that *P* was described in the mortgage-bond as *R's* adopted son, was not any evidence of an admission; and even if it were, it was not conclusive proof of the adoption (s. 31 of the Evidence Act I of 1872). *Held*, further, that the fact treated by the lower Appellate Court as an estoppel had no such effect, as it had not caused or permitted the plaintiffs to believe the adoption to be valid, and to act upon such belief. YASHVANT PUTTU SHENVI *v.* RADHABAI.

[I. L. R. 14 Bom. 312

12.—*Alienation of service vatan land by the holder of it—Impeachment of such alienation by the alienor—Hereditary Offices Act (Bombay Act III of 1874)—Vatandars.*] The plaintiff, who was a *vatandar kulkarni*, sued to recover from the defendant possession of certain land with mesne profits, alleging that it was his service *vatan* land wrongfully taken possession of by the defendant in 1880. The defendant set up a mortgage of the land alleged to have been executed to the defendant by the plaintiff's mother in the plaintiff's name during his minority. Both the lower Courts found that the land was the plaintiff's *kulkarni vatan* land; that it had been mortgaged by the plaintiff's mother to the defendant for good consideration; and that the mortgage was binding on the plaintiff. On appeal by the plaintiff to the High Court:—*Held*, confirming the decree of the lower Court, that the plaintiff was estopped from denying his title to mortgage the field. The general rule being that the grantor cannot dispute

ESTOPPEL—*continued.*

(4) ESTOPPEL BY CONDUCT—*continued.*

with his grantee his right to alienate the land to him, the circumstances of the case did not justify a departure from the rule. The plaintiff, although an hereditary public officer, was not a trustee for the purposes of the Vatan Act, and it could not be presumed that the grantee knew that the plaintiff's guardian had not obtained the previous sanction of Government to the mortgage. The plaintiff was, therefore, estopped from saying that the grant was forbidden by the Act. NARAYAN KHANDU KULKARNI *v.* KALGAUNDA BIRDAR PATEL.

[I. L. R. 14 Bom. 404

13.—*Execution of decree—Omission to assert a claim in execution-proceedings.*] Defendants Nos. 1 and 2 were sued by a creditor of their undivided grand-uncle *D*, as his legal representatives, and a decree was obtained against them as such. In execution of that decree the house in dispute was put up for sale and purchased by the plaintiff. After satisfying the decree the surplus of the sale-proceeds was paid to the defendants, who received it and divided it between themselves. Plaintiff having been obstructed by the defendants in obtaining possession of the house, brought the present suit to recover possession. The Court of First Instance rejected the plaintiff's claim, on the ground that the house was the undivided family property of the defendants, and that the plaintiff should bring a partition suit. The plaintiff appealed to the Assistant Judge, who was of opinion that the defendants' omission to set up their title to the property in question at the execution-sale and the acceptance of the surplus of the proceeds of sale estopped them from impeaching the sale and setting up their title. He, therefore, reversed the lower Court's decree and awarded the house to the plaintiff. On appeal by the defendants to the High Court:—*Held*, reversing the decree of the lower Appellate Court, that the defendants were not estopped from setting up their title. Proceedings in execution are *in invitum* as regards the judgment-debtor, and he is in no way called upon to notice them. It was not suggested that the defendants took any part in the execution-proceedings, or stood by so as to induce bidders to suppose that they claimed no interest other than as representatives of the original judgment-debtor, or that their silence misled the bidders at the sale. As to the reception of the residue of the purchase-money after satisfaction of the judgment-debt, it took place after the sale was completed. GURUPADAPA *v.* IRAPA.

[I. L. R. 14 Bom. 558

14.—*Lease by mortgagor to mortgagee—Subsequent sale of equity of redemption by mortgagor—Suit by purchaser to redeem and for possession—Acquiescence.*] The purchaser from the mortgagor of the equity of redemption having brought a redemption-suit, the mortgagee contested his right to recover possession, on the ground that prior to the purchase, the mortgagor had granted to him (the mortgagee) a *mulgeni* or permanent lease:—*Held*, that the plaintiff was not bound by,

ESTOPPEL—*continued.*

(4) ESTOPPEL BY CONDUCT—*continued.*

the lease, although a long period had elapsed since it was granted, it having appeared that the plaintiff had on a former occasion contended that the lease was a forgery and fraudulent; and as the mortgagee was then entitled to possession under his mortgage, no acquiescence in the lease could be inferred from the mere fact of the mortgagee having remained in possession, it not being alleged that rent was ever paid to the plaintiff. SUBRAO MANGESHAYA *v.* MANJAPA SHETTI.

[I. L. R. 16 Bom. 705

15.—*Suit for sale by mortgagee against auction-purchaser, mortgagee having accepted part of the proceeds of former sale.*] On the 10th of February 1873, one *S R* mortgaged to the plaintiff an undefined one *biswa* share out of three *biswas* owned by him. On the 20th of March 1877, *J P* and *G P* brought to sale in execution of money-decrees against *S R* two out of those three *biswas*, which two *biswas* were purchased by the defendant. The sale was confirmed on the 23rd of April 1877. Out of the proceeds of that sale Rs. 1,464-14-9 were appropriated by the plaintiff in part satisfaction of his mortgage. On the 16th of April 1877, the plaintiff sued the auction-purchaser for sale of one *biswa* in satisfaction of his mortgage.—*Held*, that even if it could be shown (which it could not) that the particular *biswa* mortgaged to the plaintiff was one of those which had passed into the defendant's possession, the plaintiff was estopped by his previous conduct from suing to bring it to sale under his mortgage. JHINKA *v.* BALDEO SAHAI.

[I. L. R. 14 All. 509

16.—*Payment of a tax for one year without protest—Payment of the tax in a subsequent year under protest—Suit to recover money so paid—Cause of action.*] The plaintiff paid a house tax, at the rate of Rs. 6, for the year 1890 without any protest. When the tax was sought to be levied from the plaintiff at the same rate for the year 1891, he objected to the levy as illegal and excessive, and paid the tax under protest. He then sued to recover what he alleged was an excess charge of Rs. 5 in respect of the tax for 1891. His claim was rejected on the ground that he was estopped from recovering the alleged excess by reason of his having paid the tax for 1890 without protest:—*Held*, that the suit was not barred. The levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year. PITAMBERDAS *v.* JAMBUSAR TOWN MUNICIPALITY.

[I. L. R. 17 Bom. 510

17.—*Suit in ejectment as against trespassers—Previous admission by plaintiff of defendant's tenancy—N.-W. P. Rent Act (Act XII of* 1881), *s.* 36.] The service of a notice of ejectment under *s.* 36 of Act No. XII of 1881 is, as between the person who causes such notice to be served, and the person on whom it is served, a conclusive admission by the former of the existence between them of the relationship of landlord and tenant and the landlord cannot afterwards sue in the Civil Court to eject the same tenant from the same land on the ground that he is not a tenant but a mere trespasser. BALDEO SINGH *v.* IMDAD ALI.

[I. L. R. 15 All. 189

18.—*Purchaser at execution-sale—Representative—Mortgage by alleged benamidar—Evidence Act (I of* 1872), *s.* 115.] *E*, being in possession of the documents of title, mortgaged land to the plaintiff. *E* and his father *A* borrowed money from one *R*, who obtained a decree against *A*, and purchased the land at the execution-sale. In a suit for foreclosure of the plaintiff's mortgage against *E* and *R*, the lower Courts held that *A* was the true owner, but the lower Appellate Court did not decide whether the plaintiff's mortgage was a valid transaction:—*Held*, on second appeal, that *R* acquired the property adversely to *A* and not as his representative, and that there was no estoppel against him. *Dinendranath Sannial* v. *Ramkumar Ghose*, I. L. R. 7 Calc. 107: L. R. 8 I. A. 65; and *Lala Parbhu Lal* v. *Mylne*, I. L. R. 14 Calc. 401, followed. BASHI CHUNDER SEN *v.* ENAYET ALI.

[I. L. R. 20 Calc. 236

19.—*Estoppel caused by representation on which action has followed—Evidence Act (I of* 1872), *s.* 115—*Title, as between rival purchasers, supported by an estoppel affecting the assignee of the person estopped—Notice.*] The law enacted in the Evidence Act, 1872, s. 115, relating to estoppel as a consequence of declaration, act or omission causing another's belief, and action thereon, does not differ from the English law on that subject, of which the general principle is stated in *Cairncross* v. *Lorimer*, 3 H. L. C. 829. The main question, in determining whether estoppel has been occasioned, is whether the representation has caused the person to whom it has been made to act on the faith of it. The existence of estoppel does not depend on the motive, or on the knowledge of the matter, on the part of the person making the representation. It is not essential that the intention of the person whose declaration, act or omission has induced another to act, or to abstain from acting, should have been fraudulent, or that he should not have been under a mistake or misapprehension. The word "intentionally" seems to have been used in s. 115 for the purpose of declaring the law as it had been stated to be in judgments in England. On this point, the opinions expressed in the judgments in *Ganga Sahai* v. *Hira Singh*, I. L. R. 2 All. 809, and in *Vishnu* v. *Krishnan*, I. L. R. 7 Mad. 3, referred to, and disaffirmed. A widow had held *benami*, for her husband during his life, property as to which he had executed a *hibanama* in her favour. After his death she mortgaged the

ESTOPPEL—*concluded.*

(4) ESTOPPEL BY CONDUCT—*concluded.*

property, her son representing her in the transaction. After her death, in a suit between rival purchasers of part of the property comprised in the *hibanama*, and in the mortgage, the plaintiff derived his title from the son, having purchased his inherited share of the estate, while the defendants relied on a *purchase* at a sale in execution of a decree obtained by the mortgagee:—*Held*, that s. 115 of the Evidence Act was applicable. The son had represented that the *hiba* gave a right to his mother to mortgage, and consequently neither he nor his representative in estate could be allowed to deny the truth of this representation, intentionally made on his part, which also had been acted on by the mortgagee; and it made no difference that the son had not had a fraudulent intention. As a result of the estoppel upon the son, any purchaser of the mortgagee's interest, at a sale regularly carried out, would have acquired a valid title to the property, although such purchaser might have been fully aware of all the circumstances. SARAT CHUNDER DEY *v.* GOPAL CHUNDER LAHA.

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[I. L. R. 18 Calc. 247

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[I. L. R. 15 Mad. 491

(1) MODE OF DEALING WITH EVIDENCE.

1.—*Questions of evidence.*] Questions as to the admissibility of evidence should be decided as they arise, and should not be reserved until judgment in the case is given. JADU RAI *v.* BHUBOTARAN NUNDY.

[I. L. R. 17 Calc. 173

(2) DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS.

(*a*) DECREES AND PROCEEDINGS NOT INTER PARTES.

2.—*Decrees as to rate of rent in former suits.*] Decisions, as to rates of rent, in previous suits are admissible in a subsequent suit as evidence of local usage, though the parties in the subsequent suit were not parties to the previous suits. EASWARA DOSS *v.* PUNGAVANACHARI.

[I. L. R. 13 Mad. 361

3.—*Evidence Act (I of 1872), s. 35—Title-deeds—Petition of plaintiff's predecessor asserting title—Judgment obtained by plaintiff's predecessor recognising title.*] In a suit to establish the plaintiff's title to certain land, he put in evidence (1) a conveyance in favour of his father; (2) a sale-certificate issued to his father's vendor; (3) an

EVIDENCE—CIVIL CASES—*continued.*

(2) DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—*continued.*

(*a*) DECREES AND PROCEEDINGS NOT INTER PARTES—*continued.*

order made in certain execution-proceedings in which was recited a petition by his father asserting his title; (4) a judgment obtained by his father in which his title was recognised. Neither the defendants nor their predecessors were parties to any of these instruments or proceedings:—*Held*, that all these documents were relevant and admissible in evidence. VENKATASAMI *v.* VENKATREDDI.

[I. L. R. 15 Mad. 12

4.—*Evidence Act* (*I of* 1872), *ss.* 8, 9, 13, 40, 43.—*Admissibility in evidence of judgments not inter partes—Judgment in criminal case.*] *P* brought a suit against *K*, a Hindu widow, to establish his right of inheritance in certain villages which had belonged to *K's* husband, and to have it declared that her husband died childless, and that *K* had falsely put forward a child of unknown parentage as her husband's son. *K* was the only defendant, and she maintained that the child in question was her son by her deceased husband. The suit was dismissed on the merits by the Court of First Instance, and by the High Court on appeal. After *K's* death *P* brought a suit against *D*, whom the Collector as Manager of the Court of Wards had accepted as the minor son of *K*, and against the Collector as such manager, for possession of the same villages upon the same grounds as those put forward in the former suit:—*Held* by the Full Bench that the judgments of the Court of First Instance and the High Court in the former suit did not operate as *res judicata* in the present suit, but (BRODHURST, J., dissenting on this point) that they were admissible in evidence in the present suit. *Per* EDGE, C. J., and TYRRELL, J.—The judgments were not admissible under s. 8 or s. 9 of the Evidence Act (I of 1872), nor was either of them a "transaction" or a "fact" within the meaning of s. 13. But the record, and not the judgments alone, in the former suit, was admissible under s. 13 (*b*), independently of s. 43, as evidence of a particular instance in which the alleged right of the plaintiff to the property now in suit was at that time claimed and disputed, the word "right" in both clauses (*a*) and (*b*) of s. 13 including a right of ownership, and not being confined, as held by the majority in *Gujju Lall* v. *Futteh Lall*, I. L. R. 6 Calc. 171, to incorporeal rights. But the reasons given in the judgments in the former suit for the decree could not be considered in the present suit. *Per* STRAIGHT, J.—Under s. 43 of the Evidence Act the question was whether the *existence* of the former judgments was a fact in issue or relevant under some other provision of the Act. Here the question was not as to the *existence* of the former judgments and decrees as a fact in issue or relevant fact; but though s. 43 declared judgments, orders and decrees other than those mentioned in ss. 40, 41 and 42 irrelevant *quâ* judgments, orders and decrees, it did not make them absolutely inadmissible when they were the best evidence of something that might be proved *aliunde*. The former judgments and decrees were not themselves a "transaction" or "instances" within the meaning of s. 13; but the suit in which they were made was a transaction or an instance in which the defendant's right as the living son of *K's* husband to obtain proprietary possession of his father's estate was claimed and recognised, and to establish that such a transaction or instance took place, they were the best evidence. *Per* BRODHURST, J.—That for the reasons given by GARTH, C. J., and JACKSON and PONTIFEX, JJ., in *Gujju Lall* v. *Futteh Lall*, I. L. R. 6 Calc. 171, the judgments in the former suit were not admissible in evidence. *Per* MAHMOOD, J.—That for the reasons given in the dissentient judgment of MITTER, J., in *Gujju Lall* v. *Futteh Lall*, I. L. R. 6 Calc. 171, the former judgments were admissible in evidence. It having been alleged that the defendant was in reality one *R*, the defence attempted to use as evidence a judgment in a criminal case in which the defendant was prosecuted as *R* for causing simple hurt, and in which the Court had found that *R* had died some time before the date of the alleged offence, and expressed an opinion that the present plaintiff (who was not the prosecutor) had got up the case:—*Held* by EDGE, C. J., and BRODHURST and TYRRELL, JJ., that the judgment of the Criminal Court was not admissible in evidence. *Held* by STRAIGHT, J., with doubt, and on the principle that in cases of doubt a Judge should decide in favour of admissibility rather than of non-admissibility, that the judgment was a fact which went to establish the identity of the defendant with the person he alleged himself to be, or at any rate to show that he was not the person the plaintiff said he was, and that it was therefore admissible under s. 9 of the Evidence Act. *Held* by MAHMOOD, J., that the judgment was admissible under s. 8 and, if not, under other sections of the Evidence Act. COLLECTOR OF GORAKHPUR *v* PALAKDHARI SINGH.

[I. L. R. 12 All. 1

5.—*Evidence Act* (*I of* 1872), *s.* 13—*Document executed by other tenants — Suit for ejectment.*] In a suit for possession of land, the plaintiffs claimed title under a lease from the *shrotriemdars* of the village where the land was situated. The defendants who had obstructed the plaintiffs from taking possession of part of the land, claimed to have permanent occupancy rights; and asserted that the *shrotriemdars* were entitled not to the land itself but to *melvaram* only. To meet this allegation the plaintiffs tendered in evidence documents executed by other tenants in the same village showing that they were *purahudis* merely. The defendants had received no notice to quit before suit:—*Held*, that the documents above referred to were admissible under Evidence Act, s. 13. VYTHILINGA *v.* VENKATACHALA.

[I. L. R. 16 Mad. 194

EVIDENCE—CIVIL CASES—*continued.*

(2) DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—*concluded.*

(*a*) DECREES AND PROCEEDINGS NOT INTER PARTES—*concluded.*

6.—*Suit by the purchaser at execution-sale to recover the purchase-money.*] The plaintiff purchased land sold in execution of a decree in favour of the defendant, but was subsequently evicted by the son of the judgment-debtor; he now sued in 1889 to recover the purchase-money paid by him, on the ground that the judgment-debtor possessed no saleable interest in the property in question. It appeared that the son of the judgment-debtor had obtained a decree in 1888 against the plaintiff and others declaring that she (the judgment-debtor) had no saleable interest in the property, and that in that suit the present defendant had given evidence in support of the present plaintiff's contention; the judgment in that suit was now admitted in evidence against the defendant:—*Held*, that the judgment in the former suit was not evidence against the defendant, he not having been a party to it; and that the suit should be dismissed on the ground that there was no legal evidence that the judgment-debtor, whose interest in the land had been purchased by the plaintiff, possessed no legal interest therein. NILAKANTA *v.* IMAMSAHIB.

[I. L. R. 16 Mad. 361

(3) MAPS.

7.—*Evidence Act* (*I of* 1872), *s.* 83—*Thakbast Survey map—Statements recorded in such map.*] *Debutter* land within the limits of a revenue-paying *mouzah* which had been mortgaged by the defendants to a predecessor in title of the plaintiffs, was exempted from the mortgage, the deed specifying the number of *bighas* making the area of the *debutter*, and this statement in the deed was held to be an admission. Among other evidence, adduced to counteract the effect of this admission, was a *thakbast* map made at a revenue survey. The amin who made it had no authority to determine what lands were *debutter*, but only to lay down, and to map, boundaries:—*Held*, that this map could not be treated as raising a presumption of correctness within s. 83 of the Indian Evidence Act, 1872, on the question as to the amount of *debutter* land in one of the villages mapped. Statements, also, as to what lands were *debutter* appeared on the face of the map to have been made according to the pointing out of the agents of the proprietors of the *mouzah*, and the principal tenants in the presence of the agents of the holders of estates in the neighbouring *mouzahs*. *Held*, that these statements were not evidence on the issue now raised. JARAO KUMARI *v.* LALONMONI.

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[L. R. 17 I. A. 145

(4) MISCELLANEOUS DOCUMENTS.

(*a*) BOOKS.

8.—*Evidence Act* (*I of* 1872), *ss.* 57, 87—*Books of history.*] In deciding a suit the District Judge referred to a Portuguese work dated 1606, "*India Orientalis Christiana*" published in 1794, and Hough's "*History of Christianity in India*" published in 1839:—*Held*, that the District Judge was justified under ss. 57 and 87 of the Evidence Act in referring to the books above-mentioned. AUGUSTINE *v.* MEDLYCOTT.

[I. L. R. 15 Mad. 241

EVIDENCE—CIVIL CASES—*continued.*

(4) MISCELLANEOUS DOCUMENTS—*concld.*

(*a*) BOOKS—*concluded.*

(*b*) REGISTERS.

9.—*Bhuinhari register prepared under the Chota Nagpore Tenures Act* (*Bengal Act II of* 1869)—*Evidence of title.*] A *bhuinhari* register prepared under Bengal Act II of 1869 is not conclusive evidence of the title of the person recorded therein. KIRPAL NARAIN TEWARI *v.* SUKURMONI.

[I. L. R. 19 Calc. 91

(*c*) WAJIB-UL-ARZ.

10.—*Evidence of custom—Improper use of wajib-ul-arz to record wishes of sole proprietor of village—Primogeniture.*] The object of the *wajib-ul-arz* is to supply a reliable record of existing local custom. It was never intended that the *wajib-ul-arz* should be used as an indirect means of giving effect to the wishes of a sole proprietor with regard to the nature of his tenure or the mode of devolution of the property which should obtain after his death. SUPERUNDDHWAJA PRASAD *v.* GARURADDHWAJA PRASAD.

[I. L. R. 15 All. 147

(5) SECONDARY EVIDENCE.

(*a*) UNSTAMPED OR UNREGISTERED DOCUMENTS.

11.—*Evidence Act* (*I of* 1872), *s.* 91—*Bought and sold notes—Contract reduced to writing and unstamped.*] The plaintiffs sued to recover damages for the non-acceptance of wheat which the defendant on the 16th May 1889, by two contracts, agreed to purchase. At the hearing in order to prove the terms of the contracts the plaintiffs tendered two notes or memoranda of the contracts which purported to be signed by the broker and also by the defendant. These notes were in fact the sold notes which the broker had given to the plaintiffs. Each of these notes had been stamped with an anna-stamp, but the stamp on one of them had not been cancelled at all, and the stamp on the other was without any mark of cancellation except a small part of the first letter of the defendant's signature, consisting of a slightly curved line. On these notes being tendered in evidence, it was objected that they were inadmissible, being unstamped, having regard to ss. 11 and 34 of the Stamp Act I of 1879. The Court allowed the objection and rejected the notes. The plaintiffs then sought to prove the contracts by oral evidence, contending that the sold not s did not themselves constitute the contracts, but were only memoranda of parol contracts prepared by the broker for the information of the parties:—*Held*, that the terms of

EVIDENCE—CIVIL CASES—*concluded.*

(5) SECONDARY EVIDENCE—*concluded.*

(*a*) UNSTAMPED OR UNREGISTERED DOCUMENTS—*concluded.*

the contracts were reduced to writing, and no evidence, except the documents themselves, could be given in proof of them—s. 91 of the Evidence Act I of 1872. RALLI *v.* CARAMALLI FAZAL.

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(*b*). LOST OR DESTROYED DOCUMENTS.

12.—*Evidence Act* (*I of* 1872), *s.* 65—*Necessity of accounting for non-production of original document—Discretion of Court.*] Whether or not sufficient proof of search for, or loss of, an original document, to lay a ground for the admission of secondary evidence, has been given, is a point proper to be decided by the Judge of first instance, and is treated as depending very much on his discretion. His conclusion should not be overruled, except in a clear case of miscarriage. In a suit alleging want of authority to adopt, the defence rested on the case that an *anumati patro* had been given by the defendant's deceased husband, but failed to show that there had been a sufficient search for, and to establish the loss of, the original document, so as to render secondary evidence of its contents admissible. HARRIPRIA DEBI *v.* RUKMINI DEBI.

[I. L. R. 19 Calc. 438

[L. R. 19 I. A. 79

13.—*Suit on award — Civil Procedure Code, s.* 525.] Secondary evidence of the contents of an award is admissible on proof of its being lost. GOPI REDDI *v.* MAHANANDI REDDI.

[I. L. R. 15 Mad. 99

14.—*Evidence Act* (*I of* 1872), *ss.* 65, 91—*Limitation Act* (*XV of* 1877), *s.* 19—*Acknowledgment in writing.*] Limitation Act, s. 19, must be read with Evidence Act, ss. 65 and 91, and does not exclude secondary evidence in cases where such would be admissible under s. 65. CHATHU *v.* VIRARAYAN.

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EVIDENCE—CRIMINAL CASES—*contd.*

(1) CONSIDERATION OF AND MODE OF DEALING WITH EVIDENCE.

1.—*Trial for robbery and murder — Offences constituting parts of the same transaction—Evidence of robbery considered in trial for murder—Verdict of jury.*] Persons convicted of robbery by a Sessions Judge and a jury, and of murder by the Sessions Judge with assessors, appealed to the High Court against the conviction on the charge of murder:—*Held*, that in coming to a conclusion as to whether the evidence justified the conviction appealed against, the verdict of the jury should not be taken into consideration. But on its appearing that the two offences constituted parts of the same transaction:—*Held*, that recent and unexplained possession of the stolen property which would be presumptive evidence against the prisoners on the charge of robbery was similarly evidence against them on the charge of murder. QUEEN-EMPRESS *v.* SAMI.

[I. L. R. 13 Mad. 426

2.—*Evidence, admissibility of—Evidence showing commission of another offence by accused other than that for which they are being tried.*] In a criminal trial evidence otherwise admissible is not rendered inadmissible by the fact that it discloses the commission of an offence other than that in respect of which the trial is being held. *Reg.* v. *Briggs*, 2 M. & R. 199, referred to. QUEEN-EMPRESS *v.* MULUA.

[I. L. R. 14 All. 502

(2) DEPOSITIONS.

3.—*Deposition of medical witness—Criminal Procedure Code* (*X of* 1882), *s.* 509—*Deposition wrongly admitted in evidence—Evidence Act* (*I of* 1872), *ss.* 80 *and* 114, *ill.* (*e*).] Before the deposition of a medical witness taken by a committing Magistrate can, under s. 509 of the Code of Criminal Procedure, be given in evidence at the trial before the Court of Session, it must either appear from the Magistrate's record, or be proved by the evidence of witnesses, to have been taken and attested by the Magistrate in the presence of the accused. The Court is neither bound to presume under s. 80, nor ought it to presume under either s. 80 or s. 114, ill. (*e*), of the Evidence Act (I of 1872), that the deposition was so taken and attested. *Queen-Empress* v. *Riding*, I. L. R. 9 All. 720, and *Queen-Empress* v. *Pohp Sing*, I. L. R. 10 All. 174, approved. KACHALI HARI *v.* QUEEN-EMPRESS.

[I. L. R. 18 Calc. 129

4.—*Evidence Act, ss.* 80, *and* 132—*Self-incriminating statements of witness—Proof and admissibility of depositions containing such statements in proceedings against the witness.*] A revenue official was charged with the offence of attempting to receive a bribe from certain ryots who gave evidence for the prosecution, and he was convicted. He subsequently charged the ryots with having conspired to bribe him, and in their trial their depositions in the previous case were

EVIDENCE—CRIMINAL CASES—*contd.*

(2) DEPOSITIONS—*concluded.*

tendered in evidence for the prosecution:—*Held*, that the depositions should have been admitted in evidence. QUEEN-EMPRESS *v.* SAMIAPPA.

[I. L. R. 15 Mad. 63

5.—*Depositions in counter-case.*] The depositions of witnesses given in a counter-case may be used as evidence against them on their trial as accused persons, but such depositions could only be evidence against the persons making them. *Queen-Empress* v. *Gopal Dass*, I. L. R. 3 Mad. 271, and *Queen-Empress* v. *Ganu Sonba*, I. L. R. 12 Bom. 440, followed. MOHER SHEIKH *v.* QUEEN-EMPRESS.

[I. L. R. 21 Calc. 392

(3) EXAMINATION AND STATEMENTS OF ACCUSED.

6.—*Statements made before Magistrate as approvers—Refusal of Judge of Sessions Court to put them on record — Criminal Procedure Code, s.* 287.] It is not optional with the prosecution, on the trial before the Court of Sessions, to put in confessional statements of persons who have been examined before the Magistrate: where the Sessions Judge refused to place on the record such statements he was held to have committed an irregularity. QUEEN-EMPRESS *v.* RAMA TEVAN.

[I. L. R. 15 Mad. 352

(4) STATEMENTS TO POLICE-OFFICERS.

7.—*Criminal Procedure Code, s.* 161—*Penal Code, (Act XLV of* 1860), *ss.* 191 *and* 193—*False evidence —Statement made to a Police-officer investigating a case—Mode of recording such statement.*] It is not necessary that the statement of a witness recorded under s. 161 of the Code of Criminal Procedure, 1882, should be elicited and recorded in the form of alternate question and answer. It is sufficient if such statement is substantially an answer to one or more questions addressed to the witness before the statement is made. The provisions of ss. 191 and 193 of the Penal Code apply to the case of false statements made under s. 161 of the Code of Criminal Procedure, 1882. It is not illegal, though unnecessary, for a Police-officer recording a statement under s. 161 of the Code of Criminal Procedure, 1882, to obtain the signatures of persons present at the time to authenticate his record of such statement. QUEEN-EMPRESS *v.* BHAGWANTIA.

[I. L. R. 15 All. 11

8.—*Criminal Procedure Code, ss.* 161 *and* 162—*Statement made by a witness to Police-officer making an investigation—Use of such statement to contradict witness—Use of statement against accused.*] A statement made by a witness under s. 161 of the Code of Criminal Procedure to a Police-officer investigating a case may be proved at the trial of such case to contradict such witness, the witness having been first cross-examined on the point in respect of which it is sought to contradict him. But where it appeared that, but for the principal witness for the defence having been discredited

EVIDENCE—CRIMINAL CASES—*concld.*

(4) STATEMENTS TO POLICE-OFFICERS —*concluded.*

by means of proof of a previous inconsistent statement made by the said witness before the investigating officer, the accused would have been acquitted, it was *held* that this amounted to a using of such statement as evidence against the accused within the meaning of s. 162 of the Code of Criminal Procedure. *Queen-Empress* v. *Sitaram Vithal*, I. L. R. 11 Bom. 657, approved. QUEEN-EMPRESS *v.* MADHO.

[I. L. R. 15 All. 25

9.—*Criminal Procedure Code (Act X of* 1882), *ss.* 161 *and* 172—*Statements of witnesses recorded by Police-officers investigating under Chapter XIV of the Criminal Procedure Code—Police-diaries.*] The privilege given by s. 172 of the Code of Criminal Procedure does not extend to statements taken under s. 161, but recorded in the diary made under s. 172. SHERU SHA *v.* QUEEN-EMPRESS.

[I. L. R. 20 Calc. 642

10.—*Statement as complainant while in custody as an accused person.*] If a person while in custody as an accused gives information to the Police as complainant in another case, his statements as such informant cannot be used as evidence against him on his trial. MOHER SHEIKH *v.* QUEEN-EMPRESS.

[I. L. R. 21 Calc. 392

EVIDENCE—PAROL EVIDENCE. *Col.*

1. Varying or Contradicting Written Instruments 348

See CONTRACT — BOUGHT AND SOLD NOTES.

[I. L. R. 20 Calc. 854

See PRINCIPAL AND AGENT—COMMISSION AGENTS.

[I. L. R. 16 Mad. 238

(1) VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

1.—*Evidence to vary written contract—Evidence Act (I of* 1872), *s.* 92—*Bought-and-sold notes—Oral evidence as to matter on which document is silent—Damages.*] The defendants agreed to purchase, to arrive, from Messrs. Ralli Brothers, 3,000 maunds of copper, July shipment, and, on the 13th August, the defendants entered into a contract with the plaintiffs to sell to them 750 maunds out of this copper. The bought-and-sold notes, forming the contract between the plaintiffs and the defendants, corresponded one with the other, and constituted a contract for delivery of 750 maunds conditional on arrival within four months. Fifteen hundred maunds or thereabouts of this copper arrived at Ralli Brothers' godowns within the time mentioned in the contract between the plaintiffs and the defendants. The defendants delivered to the plaintiffs 375 maunds 6 chittacks of copper within time; and made no further delivery to the plaintiffs, no other shipment of the

EVIDENCE—PAROL EVIDENCE—*contd.*

(1) VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

copper contracted for arriving within time at Calcutta. In a suit brought by the plaintiffs to recover damages for breach of contract to deliver, the defendants sought to show by oral evidence that the contract was for delivery of 750 maunds, if one-fourth of each of the successive arrivals at Ralli Brothers' godowns should, in the aggregate, amount to 750 maunds:—*Held*, that such evidence was inadmissible under s. 92 of the Evidence Act, and that the plaintiffs were entitled to recover. JADU RAI *v.* BHUBOTARAN NUNDY.

[I. L. R. 17 Calc. 173

2.—*Evidence Act* (*I of* 1872), *s.* 92—*Oral evidence to show that an apparent sale-deed was a mortgage.*] In a suit by an attaching creditor to set aside an order (which allowed an objection made to his attachment by one claiming under a sale-deed from the judgment-debtor), and for the declaration of the judgment-debtor's title, the sole issue framed was whether the sale-deed was *bonâ fide* and supported by consideration:—*Held*, that the plaintiff was entitled to show by collateral evidence that the sale-deed was really a usufructuary mortgage and that the mortgage had expired. VENKATRATNAM *v.* REDDIAH.

[I. L. R. 13 Mad. 494

3.—*Evidence Act* (*I of* 1872), *s.* 92, *proviso* 4—*Endorsement on grant—Transaction distinct from original grant.*] The plaintiff sought to attach a certain *hak* as belonging to his judgment-debtor *K.* The defendant, who was the original grantor of the *hak*, pleaded a re-grant of the *hak* to himself. In support of this plea, the defendant produced from his possession the original *sanad* bearing the following endorsement by *K.* "You have passed me a receipt for the *sanad*. I have accordingly given you the ownership of the *sanad*. Therefore over the said *sanad* I have no right or title." The defendant offered to put in this endorsement and also tendered the evidence of *K's* brother:—*Held*, that the alleged re-grant was a transaction entirely distinct from the original grant, and, therefore, not one falling under proviso 4 to *s.* 92 of the Evidence Act (I of 1872). The defendant was at liberty to adduce evidence to prove this transaction. HERAMBDEV DHARNIDHARDEV *v.* KASHINATH BHASKAR.

[I. L. R. 14 Bom. 472

4.—*Evidence Act* (*I of* 1872), *s.* 92—*Sale-deed—Contemporaneous oral agreement for re-conveyance—Mortgage.*] In a suit to recover possession of land on the footing of a sale-deed executed by the defendants to the plaintiff's vendor, the defendants set up a contemporaneous oral agreement for the re-conveyance of the land to them on the repayment of a sum of money then borrowed by them from the vendee, and alleged that they had retained possession of, and held the *pattah* for, the land throughout:—*Held*, that the defendants were entitled to prove by oral evidence that the transaction was a mortgage and not a sale, unless the

EVIDENCE—PAROL EVIDENCE—*contd.*

(1) VARYING OR CONTRADICTING WRITTEN INSTRUMENTS—*continued.*

plaintiff was an innocent purchaser for value without notice of the mortgage. *Lincoln* v. *Wright*, 4 De G. & J., 16, followed. *Venkatratnam* v. *Reddiah*, I. L. R. 13 Mad. 494, considered. RAKKEN *v.* ALAGAPPUDAYAN.

[I. L. R. 16 Mad. 80

5.—*Custom or usage qualifying contract—Evidence Act* (*I of* 1872), *s.* 92, *proviso* 5—*Shipment, meaning of.*] On the 18th April 1890, the defendant signed a contract (No. 3053) to buy from the plaintiffs 25 bales grey *dhoties* "June shipment, in four lots, with an interval of four weeks." These goods were not supplied, as they could not be obtained at the price limited. On the 24th September, 1890, the defendant gave the plaintiffs an order at an increased limit of price in the following terms:—"Please telegraph your Manchester friends to purchase on my account 25 bales grey *dhoties* relating to No. 3053 at an all-round advance of 1*d.* per pair on original limits for November, December, January shipments, in three monthly lots, about 8 bales to be shipped in each month." This order was accepted, and the goods were shipped as follows:—6 bales were handed to the carriers (the S. & N.-W. Railway Co) in Manchester on the 28th November 1890, and were shipped at Birkenhead on the 9th December 1890; 6 bales were handed to the same carriers on the 4th December 1890, and were shipped on the 13th December 1890; 10 bales were handed to the same carriers on the 23rd December and 1 bale on the 24th December, and these 11 bales were shipped on the 6th January 1891. The defendant refused to accept the goods. He contended that the documents of the 18th April and 24th September should be read together, and that the final contract was for November, December, January shipments, in three monthly lots, at intervals of four weeks. He also contended that the shipment on the 9th December 1890 was a late shipment, and that he was not, therefore, bound to accept the goods under the contract. As to this last contention the plaintiffs alleged that by the custom of Bombay in the case of contracts made with members of the Native Piece-goods Association, the date of the carriers' weight note was to be regarded as the date of shipment, and that, under such a contract as the one in question, delivery to the Railway Company or other inland carrier was equivalent to shipment. This custom, it was alleged, originated in consequence of the above Association having agreed that all piece-goods ordered out by its members should be conveyed to Bombay by certain lines of steamers only and by no others. It was stated that, unless some such custom existed, it would in many instances be impossible for Bombay merchants to carry out their contracts, as no steamers of the selected lines might be available. The Judge of the Court of Small Causes at the hearing found that the alleged custom existed, and was generally accepted and understood by merchants and dealers in Bombay. On reference to the High Court:—

EVIDENCE—PAROL EVIDENCE—*concld.*

(I) VARYING OR CONTRADICTING WRITTEN INSTRUMENTS - *concluded.*

Held, that evidence of the alleged custom or usage of trade was not admissible under s. 92, proviso (5), of the Evidence Act (I of 1872) to explain or vary the natural and ordinary meaning of the words in the contract. The parties contracted for a shipment on board of a ship or steamer, and to allow evidence of a usage that delivery to a Railway Company at an inland town should be regarded as equivalent to shipment on board a vessel at a seaport town would be to allow evidence of a usage repugnant to, or inconsistent with, the express terms of the contract. SMITH *v.* LUDHA GHELLA DAMODAR.

[I. L. R. 17 Bom. 129

EVIDENCE ACT (I OF 1872), s. 8.

See CONFESSION—CONFESSIONS TO POLICE-OFFICERS.

[I. L. R. 14 Bom. 260

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS — DECREES AND PROCEEDINGS NOT INTER PARTES.

[I. L. R. 12 All. 1

———, s. 9.

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS — DECREES AND PROCEEDINGS NOT INTER PARTES.

[I. L. R. 12 All. 1

———, s. 11.—*Fact making probable a fact in issue—Admission by one defendant relevant against other defendants.*] In a suit brought by the plaintiff against several defendants to prevent encroachments by the defendants in a lane which was the common property of himself and the defendants:—*Held*, that the admission of one of the defendants in a previous suit to which the other defendants were not parties as to the common character of the portion of the lane between his house and the plaintiff's, and also a similar statement in a deed put in by another of the defendants to prove his title to his own house, were admissible in evidence to establish the common character of the entire lane as alleged by the plaintiff. The fact of common ownership of other parts of the lane should be treated as relevant to the issue as to the common character of the entire lane on the principle laid down in s. 11 of the Evidence Act. NARO VINAYEK *v.* NARHARI.

[I. L. R. 16 Bom. 125

———, s. 13.

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENT, AND PROCEEDINGS IN FORMER SUITS — DECREES AND PROCEEDINGS NOT INTER PARTES.

[I. L. R. 12 All. 1

[I. L. R. 16 Mad. 194

EVIDENCE ACT (I OF 1872)—*continued.*

———, ss. 14, and 15.—*Admissibility of evidence. Penal Code s.* 206—*Fraudulent transfers of property to different persons.*] Where the accused was charged under s. 206 of the Penal Code with fraudulently transferring three properties to three different persons on a certain day, in order to prevent their being seized in execution of a decree, and the prosecution tendered evidence of five other fraudulent transfers of property effected by the accused on the same day, and apparently with the same object:—*Held*, that this evidence was admissible, under ss. 14, and 15 of the Evidence Act, to prove either that all those transfers were parts of one entire transaction, or that the particular transfers, which were specified in the charge, were made with a fraudulent intent. *Reg.* v. *Parbhudas*, 11 Bom. 90, distinguished. QUEEN-EMPRESS *v.* VAJIRAM.

[I. L. R. 16 Bom. 414

———, ss. 25 and 26.

See CONFESSION — CONFESSIONS TO POLICE-OFFICERS.

[I. L. R. 14 Bom. 260

[I. L. R. 17 Bom. 485

———, s. 27.

See CONFESSION — CONFESSIONS TO POLICE-OFFICERS.

[I. L. R. 14 Bom. 260

———, s. 30.

See CONFESSION—CONFESSIONS OF PRISONERS TRIED JOINTLY.

[I. L. R. 15 Bom. 66

———, s. 31.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 14 Bom. 312

1.—s. 32, cl. 2.—*Entry in Mahomedan marriage register to prove amount of dower fixed.*] A register of marriages kept by the Istakad, since deceased, who celebrated this marriage, in which register was entered the amount of the dower, was held to be admissible and relevant, as evidence of the sum fixed, being an entry in a book kept in the discharge of duty within s. 32, cl. (2) of the Evidence Act, 1872. ZAKERI BEGUM *v.* SAKINA BEGUM.

[I. L. R. 19 Calc. 689

[L. R. 19 I. A. 157

2.—s. 32, cl. 4.—*Statement as to custom as to adoption by widow without authority of husband.*] The lower Court having under s. 32 of the Evidence Act I of 1872 admitted in evidence a statement signed by several witnesses to the effect that a widow of the Kadva Kunbi caste cannot adopt, according to the custom of the caste, without the express authority of her husband:—*Held*, that s. 32, cl. 4 of the Evidence Act, was not applicable to the case, as the evidence was required to prove a fact in issue, and not merely a relevant fact. The statement was, therefore, inadmissible to prove the alleged custom. PATEL VANDRAVAN JEKISAN *v.* PATEL MANILAL CHUNILAL.

[I. L. R. 15 Bom. 565

EVIDENCE ACT (I OF 1872)—*continued.*

3.—s. 32, cl. 5.—*Statement of deceased relatives—Hearsay evidence—Birth, date of*] For the purpose of the decision of a question of limitation, it was necessary to prove the date of the plaintiff's birth. The plaintiff and one of his witnesses each spoke to statements made to them by relatives of the plaintiff, who were since deceased, relating to the date of the plaintiff's birth:—*Held*, that such statements were admissible in evidence under s. 32, cl. 5 of the Evidence Act. *Haines* v. *Guthrie*, L. R. 13 Q. B. D. 818, not followed. RAM CHANDRA DUTT *v.* JOGESWAR NARAIN DEO.

[I. L. R. 20 Calc. 758

4.—s. 32, cl. 6.—*Horoscope—Age, proof of.*] In a suit to set aside a decree on the ground of minority, the plaintiff relied upon a horoscope to prove his age:—*Held*, following *Ram Narain Kallia* v. *Monee Bibee*, I. L. R. 9 Calc. 613, that the horoscope was not admissible under s. 32, cl. 6 of the Evidence Act. SATIS CHUNDER MUKHOPADHYA *v.* MOHENDRO LAL PATHUK.

[I. [redacted]17 Calc. 849

——, s. 33.

See COMMISSION—[redacted]SES.

[I. L. [redacted]lc. 113

——, s. 35.

See s. 74.

[I. L. R. 18 Calc. 534

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—DECREES AND PROCEEDINGS NOT INTER PARTES.

[I. L. R. 15 Mad. 12

1.—s. 35.—*Certificate of guardianship under Act XL of 1858—Minority, Evidence of.*] A certificate of guardianship under Act XL of 1858 is no evidence of minority under s. 35 of the Evidence Act (I of 1872), being neither a book nor a register nor a record kept by any officer in accordance with any law. SATIS CHUNDER MUKHOPADHYA *v.* MOHENDRO LAL PATHUK.

[I. L. R. 17 Calc. 849

2.—s. 35.—*Petition and order—Plaint.*] The plaintiff sued as the *karnavan* of a Mapilla *tarwad* to recover lands in the possession of the defendants who were a donee from and the descendants of a previous *karnavan* and their tenants. An issue was raised as to whether the rights of the parties were governed by Makkatayom or Marumakkatayom law, and an order of a District Munsif reciting a petition to which the alleged previous *karnavan* was a party, was put in evidence to show that he had in a particular instance acted in the capacity of *karnavan* of a Marumakkatayom *tarwad*. The rough draft of a plaint which had been filed by the alleged previous *karnavan* was put in evidence to show that he admitted having alienated property in a manner which would be adverse to the claim of his *tarwad*:—*Held*, that the order and draft plaint were admissible in evidence for the above-mentioned purposes.

EVIDENCE ACT (I OF 1872)—*continued.*

Observations as to documents marked as exhibits without proof. BYATHAMMA *v.* AVULLA.

[I. L. R. 15 Mad. 19

3.—s. 35.—*Recital in a judgment—Admission of jenmi's title.*] In a suit by a *melkanomdar* to redeem a *kanom*, the *kanom* document was proved to have been lost; it appeared that a previous suit had been brought by the *jenmi* to redeem the same *kanom*, and the judgment in that suit, in which it was stated that the defendants admitted their position as *kanomdars*, was tendered in evidence to prove the *jenmi's* title:—*Held*, that the judgment was admissible in evidence. THAMA *v.* KONDAN.

[I. L. R. 15 Mad. 378

4.—s. 35.—*Entries in Collector's register—Land Registration Act (Bengal Act VII of 1876)—Register of Collector as to land registration.*] Entries in a register made under Bengal Act VII of 1876 by the Collector are entries made in an official register kept by a public servant under the provisions of a Statute, and certified copies of such entries are admissible in evidence for what they are worth. *Dictum* of GARTH, C.J., in *Saraswati Dasi* v. *Dhanpat Singh*, I. L. R. 9 Calc. 431, dissented from. SHOSHI BHOOSHUN BOSE *v.* GIRISH CHUNDER MITTER.

[I. L. R. 20 Calc. 940

——, s. 40.

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—DECREES AND PROCEEDINGS NOT INTER PARTES.

[I. L. R. 12 All. 1

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 20 Calc. 888

——, s. 41.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 16 Mad. 380

——, s. 43.

See EVIDENCE—CIVIL CASES—DECREES, JUDGMENTS AND PROCEEDINGS IN FORMER SUITS—DECREES AND PROCEEDINGS NOT INTER PARTES.

[I. L. R. 12 All. 1

——, s. 44.

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.

[I. L. R. 15 Mad. 498

——, s. 57.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—BOOKS.

[I. L. R. 15 Mad. 241

EVIDENCE ACT (I OF 1872)—*continued.*

——, s. 65.

See CASES UNDER EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE.

See LIMITATION ACT, s. 19.

[I. L. R. 15 Mad. 491

See ONUS PROBANDI—POSSESSION AND PROOF OF TITLE.

[I. L. R. 18 Calc. 201

——, s. 74.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[I. L. R. 12 All. 595

——, s. 74 and s. 35.—*Teiskhana Register—Public document—Bengal Regulation XII of* 1817, *s.* 16.] A *teiskhana* register prepared by a *patwari* under Rules framed by the Board of Revenue under s. 16 of Bengal Regul tion XII of 1817 is not a public document, nor is the *patwari* preparing the same a public servant. BAIJ NATH SINGH *v.* SUKHU MAHTON.

[I. L. R. 18 Calc. 534

——, s. 80.

See CONFESSION — CONFESSIONS TO MAGISTRATE.

[I. L. R. 12 All. 595

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

[I. L. R. 18 Calc. 129

[I. L. R. 15 Mad. 63

——, s. 83.

See EVIDENCE—CIVIL CASES—MAPS.

[I. L. R. 18 Calc 224

——, s. 87.

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—BOOKS.

[I. L. R. 15 Mad. 241

——, s. 91.

See CONFESSION — CONFESSIONS TO MAGISTRATE.

[I. L. R. 17 Calc. 862

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.

[I. L. R. 14 Bom. 102

——, s. 92.

See CASES UNDER—EVIDENCE—PAROL EVIDENCE.

See PRINCIPAL AND AGENT—COMMISSION AGENTS.

[I. L. R. 16 Mad. 238

EVIDENCE ACT (I OF 1872)—*continued.*

——, s. 106.

See ONUS PROBANDI—RENT, SUITS FOR.

[I. L. R. 12 All. 301

——, s. 110.

See ONUS PROBANDI—POSSESSION AND PROOF OF TITLE.

[I. L. R. 12 All. 46

——, s. 111.

See ONUS PROBANDI—DEEDS, SUITS TO ENFORCE OR SET ASIDE.

[I. L. R. 12 All. 523

——, s. 114.

See ACCOMPLICE.

[I. L R. 14 Bom. 331

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 17 Calc. 642

See [redacted]E—CRIMINAL CASES—DE[redacted]NS.

[I. L. R. 18 Calc. 129

[redacted]LABAR LAW—MORTGAGE.

[I. L. R. 16 Mad. 328

See RIGHT OF WAY.

[I. L. R. 15 All. 270

——, s. 115.

See CASES UNDER ESTOPPEL—ESTOPPEL BY CONDUCT.

——, s. 118.

See WITNESS—CRIMINAL CASES—PERSON COMPETENT TO BE WITNESS.

[I. L. R. 16 Bom. 661

——, ss. 129, 130, 131.

See s. 132.

[I. L. R. 21 Calc. 392

——, s. 132.

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

[I. L. R. 15 Mad. 63

——, s. 132, and ss. 129, 130, 131.—*Compelling witness to answer questions.*] The mere subpœnaing of a witness or ordering him to go into the witness-box does not compel him to give any particular answer or to answer any particular question. The words "shall be compelled to give" in s. 132, Evidence Act, apply to pressure put upon a witness after he is in the box, and when he asks to be excused from answering a question. The wording of ss. 129, 130, 131, 132, and 148, Evidence Act, compared and discussed. MOHER SHEIKH *v.* QUEEN-EMPRESS.

[I. L. R. 21 Calc. 392

EVIDENCE ACT (I OF 1872)—*concluded.*

——, s. 133.

See ACCOMPLICE.

[I. L. R. 14 Bom. 115, 331

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 17 Calc. 642

——, s. 137.

See WITNESS — CRIMINAL CASES — EXAMINATION OF WITNESSES—CROSS-EXAMINATION.

[I. L. R. 21 Calc. 401

——, s. 155 (3).—*Evidence in reply impeaching the credit of a witness.*] In a suit by one *K* claiming (*inter alia*) a share in a business as heiress of *A*. her father, the defendant pleading limitation, *K*. before the close of her case. put in evidence an entry in a Koran to shew that she was born in 1279, and in the cross-examination of *M*, a witness for the defence, put to him a letter purporting to have been written by *A* to *M*, supporting *K's* case. Upon *M* denying the genuineness of the Koran, and of certain words in the letter, it was proposed on behalf of *K* to give evidence in reply shewing that *M* had made statements to an attorney before the case inconsistent with his evidence, both as to the Koran and the letter:—*Held*. that evidence might be given in reply as regards the Koran, but not as regards the letter; no substantive evidence having been given as to the latter before the close of the plaintiff's case. *Semble*:—The expression "which is liable to be contradicted" in s. 155 (3) of the Evidence Act is equivalent to "which is relevant to the issue." KHADIJAH KHANUM *v.* ABDOOL KURREEM SHERAJI.

[I. L. R. 17 Calc. 344

EXAMINATION OF ACCUSED PERSON.

See CONFESSION — CONFESSIONS TO MAGISTRATE.

[I. L. R. 17 Calc. 862

[I. L. R. 18 Calc. 549

See CRIMINAL PROCEDURE CODE, S. 342.

[I. L. R. 13 All. 345

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See CIVIL PROCEDURE CODE, S. 232.

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[I. L. R. 13 All. 98

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[I. L. R. 16 Mad. 429

See ESTOPPEL — ESTOPPEL BY JUDGMENT.

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See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE.

[I. L. R. 14 All. 358

See LIMITATION ACT, 1877, S. 5.

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[I. L. R. 20 Calc. 551

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See PENSIONS ACT, s. 4.

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[I. L. R. 17 Bom. 555

——, Application for.

See BENGAL TENANCY ACT, SCH. III, ART. 6.

[I. L. R. 21 Calc. 387

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See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

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[I. L. R. 17 Calc. 491

See RULES MADE UNDER ACTS.

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[I. L. R. 12 All. 564

(1) EFFECT OF CHANGE OF LAW PENDING EXECUTION.

1.—*Decree transferred to Collector for execution —Talukdars Act (Bombay Act VI of* 1888), *s.* 31, *cl.* 2—*Construction of statute—Retrospective operation—Sanction to sale made necessary by new law.*] A decree upon a mortgage-bond passed against part of a *talukdar's* estate on the 15th August 1887, was transferred under s. 320 of the Civil Procedure Code (Act XIV of 1882) to the Collector for execution. The property was sold on the 5th August 1889, but the Collector refused to confirm the sale, as the sanction of the Governor in Council under cl. 2, s. 31 of the Talukdars Act (Bombay Act VI of 1888), which came into force on the 25th March 1889, had not been obtained:—*Held*, that the section was not retrospective in its operation, and that the sale should be confirmed, although no sanction had been obtained. When the Act passed, the plaintiff had already acquired a vested right by the decree to have the property sold, and the presumption was that the Legislature did not intend to interfere with that vested right. That presumption was not rebutted by any intention to interfere appearing in the Act itself KALIAN MOTI *v.* PATHUBHAI FALJIBHAI.

[I. L. R. 17 Bom. 289

(2) PROCEEDINGS IN EXECUTION.

2.—*Conduct of proceedings in execution.*] Observations by STRAIGHT, J., as to the necessity of conducting the proceedings in execution of decree with the same care, and, as far as practicable, in accordance with the same procedure as that adopted in regular suits. SETH CHAND MAL *v.* DURGA DEI.

[I. L. R. 12 All. 313

FAKIRULLAH *v.* THAKUR PRASAD.

[I. L. R. 12 All. 179

EXECUTION OF DECREE—*continued.*

(2) PROCEEDINGS IN EXECUTION—*concld.*

3.—*Grounds for setting aside execution-proceedings.*] In execution-proceedings the Courts will look at the substance of the transaction, and will not be disposed to set side an execution upon mere technical grounds when they find it is substantially right. *Bissessur Lall Sahoo* v. *Luchmessur Singh*, L. R. 6 I. A. 233; 5 Calc. L. R. 477, followed. SHEO PERSHAD SINGH *v.* SAHEB LAL. RAJKUMAR LAL *v.* SAHEB LAL.

[I. L. R. 20 Calc. 453

4.—*Transfer of Property Act, ss.* 88, 89—*Application for order absolute for sale—Mortgage.*] The holder of a decree under s. 88 of the Transfer of Property Act (IV of 1882) applied for execution to the Court charged with execution of the decree:—*Held*, that this was a good application under s. 89 of the Act, and that it was not necessary that such application should be made to the Court which had passed the decree. An application for an order absolute for sale under s. 89 of the Transfer of Property Act is a proceeding in execution and subject to the rules of procedure governing such matters. OUDH BEHARI LAL *v.* NAGESHAR LAL.

[I. L. R. 13 All. 278

(3) APPLICATION FOR EXECUTION AND POWER OF COURT.

5.—*Right to execute decree — Assignment of decree – Civil Procedure Code (XIV of* 1882), *s.* 232] The person appearing on the face of the decree as the decree-holder is entitled to execution, unless it be shown by some other person, under s. 232 of the Civil Procedure Code, that he has taken the decree-holder's place. *Khettur Mohun Chattopadhya* v. *Issur Chunder Surma*, 11 W. R. 271, relied on. JASODA DEYE *v.* KIRTIBASH DAS.

[I. L. R. 18 Calc. 639

6.—*Civil Procedure Code*, 1882, *s.* 373—*Dismissal of application to execute without obtaining leave to make a fresh application—Limitation.*] Section 373 of the Civil Procedure Code does not apply to applications for execution of decrees. *Tarachand Mugraj* v. *Kashi Nath Trimbak*, I. L. R. 10 Bom. 62, followed. *Radha Charan* v. *Man Singh*. I. L. R. 12 All. 392, dissented from. WAJIHAN *alias* ALIJAN *v.* BISHWANATH PERSHAD.

[I. L. R. 18 Calc. 462

7.—*Civil Procedure Code (Act XIV of* 1882), *ss.* 43, 373, 374—*Separate applications to execute reliefs of a different character—Limitation.*] The Code of Civil Procedure does not prevent a person from making separate and successive applications for execution of a decree, giving relief of different characters, in respect to each such relief. Sections 43, 373 and 374 do not apply to proceedings for execution of decree. *Radha Charan* v. *Man Singh*, I. L. R. 12 All. 392, dissented from *Wajihan* v *Bishwanath Pershad*, I. L. R. 18 Calc. 462, followed. RADHA KISHEN LALL *v.* RADHA PERSHAD SING.

[I. L. R. 18 Calc. 515

EXECUTION OF DECREE—*continued.*

(3) APPLICATION FOR EXECUTION AND POWER OF COURT—*continued.*

8.—*Civil Procedure Code (Act XIV of* 1882), *ss.* 373, 647—"*Suit.*"] Section 647 of the Code of Civil Procedure does not operate to extend the rule laid down in respect of a suit in s. 373 to an application for execution of a decree—*Radha Charan* v. *Man Singh*, I. L. R. 12 All. 392, not followed, BUNKO BEHARY GANGOPADHYA *v.* NIL MADHUB CHUTTOPADHYA.

[I. L. R. 18 Calc. 635

9.—*Civil Procedure Code, ss.* 373, 647—*Application for execution struck off for non-payment of process-fees—Subsequent application.*] A decree-holder having applied for execution of his decree, notice was issued to the judgment-debtors, and their property was attached, but the applicant failed to pay the process-fees, and the application was struck off, and no leave to make a fresh application was obtained under Civil Procedure Code, s. 373:—*Held*, that s. 373 does not apply to applications for execution of decrees, and that the decree-holder was entitled to apply again for execution of his decree. *Radha Charan* v. *Man Singh*, I. L. R. 12 All. 392, dissented from. *Wajihan* v. *Bishwanath Pershad*, I. L. R. 18 Calc. 462; and *Shakkar Bisto Nadgir* v. *Narsingrao Ramchandra*, I. L. R. 11 Bom. 467, approved. LAKSHMI NARASIMHA *v.* ATCHANNA.

[I. L. R. 15 Mad. 240

10.—*Application for execution withdrawn by decree-holder—Civil Procedure Code, ss.* 373, 647.] The ruling in *Sarju Prasad* v. *Sita Ram*, I. L. R. 10 All. 71, only decided that, where the circumstances in regard to an application for execution of decree show that it was withdrawn at the instance of the pleader of the decree-holder, and that no sanction was given to its withdrawal with liberty to present a fresh application, any subsequent application made by that decree-holder for execution is prohibited by s. 373 read with s. 647 of the Civil Procedure Code. But where a Court of its own motion, and without being moved either by the decree holder or by his pleader, takes upon itself to strike off an application for execution for the mere purpose of clearing its file, that is not a proceeding under any provision of the Code which could bar a decree-holder from making a fresh application for execution. A first application for execution of a decree was ordered by the Court to be struck off for want of prosecution, and upon the statement of the decree-holder's pleader "that at present the case may be struck off." No permission was given to the decree-holder to withdraw the application with leave to take fresh proceedings:—*Held*, that a subsequent application for execution of the decree was barred by s 373 read with s. 647 of the Civil Procedure Code. *Sarju Prasad* v. *Sita Ram*, I. L. R. 10 All. 71, explained and followed. *Ram Rup* v. *Lalji*, Weekly Notes, 1888, p. 253; *Mahtab Kuar* v. *Sham Sundar Lal*, Weekly Notes, 1888, p. 272; and *Hira Singh* v. *Jati Prasad*, Weekly Notes, 1889, p. 204, distinguished. Observations as to

EXECUTION OF DECREE—*continued.*

(3) APPLICATION FOR EXECUTION AND POWER OF COURT—*continued.*

the necessity of conducting the proceedings in execution of decree with as much care and regularity as proceedings in suits. Under s. 647 of the Civil Procedure Code, the provisions relating to procedings in suits are to be followed and adopted in execution-proceedings, so far as they may be fairly and properly applicable thereto. FAKIR-ULLAH *v.* THAKUR PRASAD.

[I. L. R. 12 All. 179

11.—*Civil Procedure Code (Act XIV of* 1882), *s.* 373—*Redemption of mortgage on payment within six months—Non-payment, effect of—Foreclosure for decree—Final decree—Time allowed for redemption, computation of—Withdrawal of appeal—Effect of—Limitation—Review.*] The plaintiffs obtained a decree on 12th November 1886, allowing them to redeem on payment of Rs. 168-8-0 within six months. In default of payment within the prescribed time they were to stand foreever foreclosed. Against this decree the defendant appealed to the High Court. On the 10th September 1888, the High Court passed an order allowing the defendant to withdraw the appeal. On the 17th December 1888, plaintiffs applied for execution of the decree of the 12th November 1886. The lower Court, regarding the withdrawal of the second appeal as practically a confirmation of the decree of the 12th November 1886, computed the six months allowed for redemption from the date of the order of withdrawal (10th September 1888) and granted the plaintiffs' application. On appeal to the High Court:—*Held*, reversing the decision of the lower Court, that the application was time-barred, and that the plaintiff was foreclosed. The time allowed for redemption was to be computed, not from the date of the High Court's order permitting the withdrawal of the appeal, but from the date of the decree appealed from (*i.e.*, 12th November 1886). The order of withdrawal was not a decree. The only decree which could be executed was that of the 12th November 1886. The redemption money not having been paid within six months from that date, the plaintiffs were foreclosed. The Court could not, in execution-proceedings, enlarge the time fixed for redemption. *Ishwargar v. Chudasama Manabhai*, I. L. R. 13 Bom. 106, followed. *Per* BIRDWOOD, J.:—It was open to the plaintiffs to apply, if so advised, to the High Court for a review of the order of withdrawal of the 10th September 1888, with a view to the enlargement of the time of redemption as a condition which might equitably have been permitted when the defendant was allowed to withdraw the second appeal. PATLOJI *v.* GANU.

[I. L. R. 15 Bom. 370

12.—*Application for execution withdrawn by decree-holder—Civil Procedure Code, ss.* 373, 647—"*Suit*"—"*Appeal.*"] Section 647 of the Civil Procedure Code makes s. 373 applicable to proceedings in execution of decree. The words "suit" and "appeal" in s. 647 apply to suits and appeals in

EXECUTION OF DECREE—*continued.*

(3) APPLICATION FOR EXECUTION AND POWER OF COURT—*continued.*

the strict sense of those terms, and were not intended to cover proceedings for the enforcement of rights decreed in a suit or appeal. An application for execution of decree by arrest of the judgment-debtor was ordered by the Court to be struck off, upon the statement of the decree-holder's pleader that the judgment-debtor was in hiding, and that the decree-holder did not desire to prosecute the application further. At that time an order for a warrant of arrest had been issued subject to the payment of fees, but those fees had not been paid, nor had the diet-money been deposited, and no steps were taken to proceed with the application. No permission was given to the decree-holder to withdraw the application with leave to take fresh proceedings:—*Held* by the Full Bench that a subsequent application for execution of the decree was barred by s. 373 read with s. 647 of the Civil Procedure Code. *Sarju Prasad* v. *Sita Ram*, I. L. R. 10 All. 71, and *Fakirullah* v. *Thakur Prasad*, I. L. R. 12 All. 179, approved and followed. *Bijai Singh* v. *Haiyat Begum*, Weekly Notes, 1889, p. 163, distinguished. RADHA CHARAN *v.* MAN SINGH.

[I. L. R. 12 All. 392

13—*Power of Court to dismiss application for laches of applicant—Civil Procedure Code*, 1882, *Ch. VII* (*ss.* 96—109) *and Ch. XIII* (*ss.* 156—158, —*Civil Procedure Code Amendment Act* (*VI of* 1892), *s.* 4—*Striking off execution-proceedings.*] Chapters VII (ss. 96—109, relating to appearance of parties and consequence of non-appearance) and XIII (ss. 156—158, relating to adjournments) of the Code of Civil Procedure cannot, in view of s. 4 of Act No. VI of 1892, be applied to proceedings in executions of decrees. But a Court has power inherent, if not conferred by statute, to dismiss an application for execution when the applicant fails through his own *laches* to put the Court in a position to proceed with his application. Similarly, a Court has inherent power, if such power is not conferred upon it by statute, to proceed forthwith to decide an application for execution of a decree on the materials before it, when time has been granted to a party to perform any act necessary for the further progress of the application, and that act has not been done. When an order striking an execution-case off the file of pending cases, or dismissing it on grounds other than a distinct finding that the decree is incapable of execution, that the decree-holder's right to get the decree executed is barred by limitation, or by any other rule of law, or on some similar ground on which the application has clearly been dismissed on the merits, whether the word "dismissed" or the words "struck off the file," or any other similar words have been used in the order, the decree-holder is not barred by the force of any such order from presenting and prosecuting a fresh application for the execution of his decree. DHONKAL SINGH *v.* PHAKKAR SINGH.

[I. L. R. 15 All. 84

EXECUTION OF DECREE—*continued.*

(3) APPLICATION FOR EXECUTION AND POWER OF COURT—*continued.*

14—*Court to which application should be made—Civil Procedure Code, s.* 649, *para.* 2—*Decree against a sirdar—Political Agent's Court—Death of the sirdar—Application for execution against the heirs—Change of status of parties—Jurisdiction.*] A *sirdar* against whom a decree was passed in the Court of the Political Agent having died, the decree-holder applied for execution against his heirs. The Political Agent rejected the application, holding that he had no jurisdiction over the heirs, who were not *sirdars*. The decree-holder then applied for execution to the Court of the First Class Subordinate Judge of Dharwar, who would have had jurisdiction to try the suit if the deceased defendant had not been a *sirdar*, but that Court also rejected the application on the ground that s. 649, para. 2 of the Civil Procedure Code (Act XIV of 1882) applies in cases where the territorial jurisdiction of the Court is changed, and where the *status* of the parties is changed, and that the decree-holder should obtain a declaration that the decree was binding against the heirs, who were not *sirdars*:—*Held*, reversing the order, that the terms of the section are general, and draw no distinction as to the nature of the cause which puts an end to the jurisdiction. GAUSKHA *v.* ABDUL ROPKHA.

[I. L. R. 17 Bom. 162

15.—*Civil Procedure Code* (*Act XIV of* 1882), *ss.* 230, 235, 237, 245 - *Specification of property, omission of—Application defective in form.*] A decree was passed on the 6th September 1876, and on the 6th July 1888 an application for execution was made in the terms of s. 235 of the Code of Civil Procedure which did not contain a list of property, as prescribed by s. 237, and the decree-holder did not produce the same till the 11th September 1888. The application having been made and admitted, any further application would be barred after the 6th September 1888:—*Held* by the Full Bench that the application of the 6th July 1888 was one within the meaning of s. 230 of the Code of Civil Procedure. *Per* PRINSEP, PIGOT and GHOSE, JJ.—*Held*, that the application was defective as not complying with the provisions of s. 237, and as it was not amended within due time or under the provisions of s. 245, the decree-holder was barred. *Per* PRINSEP and PIGOT, JJ.—*Macgregor* v. *Tarini Churn Sircar*, I. L. R. 14 Calc. 124, should be overruled. *Per* PETHERAM, C. J.—The application could not be carried out without amendment, and no amendment could be made after the application had been admitted and registered under s. 245. So much of the decision in *Macgregor* v. *Tarini Churn Sircar* as decides that an application may be amended after admission, and registration should be overruled. *Per* O'KINEALY, J.—The original application was defective, and the further application of the 11th September 1888 was barred. An application to execute a decree if admitted, and order for execution made under s. 245, should be dealt with on its merits and decided accordingly. ASGAR ALI *v.* TROILOKYA NATH GHOSE.

[I. L. R. 17 Calc. 631

EXECUTION OF DECREE—*continued.*

(3) APPLICATION FOR EXECUTION AND POWER OF COURT—*concluded.*

16.—*Application to execute decree for sale of immoveable property in possession of a third party under valid title—Civil Procedure Code*, 1882, *ss.* 278, 287—*Rules of Bombay High Court under s.* 287—*Practice.*] Under s 287 of the Civil Procedure Code (Act XIV of 1882), and the Rules of the High Court made thereunder, a Court cannot refuse to execute its own decree ordering the sale of immoveable property in the possession of a third party under a valid title. Rule I of the High Court Rules under that section permits inquiry into the title of the judgment-debtor in respect of moveable property only. Nor can a claim set up in an investigation held under s. 287 be treated as a claim under s. 278, the latter section having reference to claims to, and objections to attachment of, property under attachment. BHIKU BAL PATIL *v.* KHEMCHAND KUBERSHET.

[I. L. R. 14 Bom. 369

(4) ORDERS AND DECREES OF PRIVY COUNCIL.

18.—*Civil Procedure Code, ss.* 211, 253, 318—*Execution of order giving effect to judgment of Privy Council—Mesne profits—Cost of receiver and management—Interest on mesne profits—Sureties for execution of decree.*] Land was put up for sale and purchased in execution of a decree. The sale was confirmed, and the purchaser was put into possession. On appeal against the order confirming the sale, the High Court held that the sale had been vitiated by certain irregularities and set it aside. The purchaser preferred an appeal to the Privy Council against the judgment of the High Court. While the appeal was pending, he was compelled to deliver up possession of the land, but security was furnished under an order of the Court by persons not being parties to the suit for its re-delivery to him, and for the payment of mesne profits, in the event of his appeal being successful. Meanwhile, the land in question was placed in charge of a receiver on the motion of other persons holding decrees against the judgment-debtors. On appeal the Privy Council reversed the order of the High Court. The purchaser was accordingly replaced in possession of the land; and he applied for execution in respect of the mesne profits against the respondents in the Privy Council and the sureties. The Court of First Instance dismissed the application as against the sureties and limited the applicant's claim against the others to the net income of the land, less the cost of management by the receiver, and allowed him no interest:—*Held*, (1) although the appeals to the High Court and the Privy Council related to the order confirming the sale and not to that by which possession was awarded, and the order in Council did not direct payment of mesne profits, yet such payment was within its purview

EXECUTION OF DECREE—*continued.*

(4) ORDERS AND DECREES OF PRIVY COUNCIL—*concluded.*

as being a benefit by way of restitution fairly and reasonably consequential upon it. *Rodger* v *The Comptoir D'Escompte de Paris*, L. R. 3 P. C. 465, followed; (2) the application was rightly dismissed against the sureties; (3) the charges involved by the appointment of the receiver should not have been allowed against the petitioner, since they were not necessary in the ordinary course of prudent management: (4) interest at 6 per cent. should have been allowed to the petitioner on the mesne profits for each year from the end of the year to the date of payment. ARUNACHELLAM *v.* ARUNACHELLAM.

[I. L. R. 15 Mad. 203

19.—*Transfer of decree for execution—Territorial jurisdiction—Civil Procedure Code (Act XIV of 1882), ss. 223, 610, 649.*] The effect of ss. 610 and 649 of the Civil Procedure Code is that the Court which formerly had, but now no longer has, territorial jurisdiction ought, when the decree is sent to it, to exercise by its own motion or when applied for the provisions of s. 223 of the Civil Procedure Code, and transfer the decree for execution to the Court which has territorial jurisdiction. GIRINDRO CHUNDER ROY *v.* JARAWA KUMARI.

[I. L. R. 20 Calc. 105

(5) DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW.

20.—*Decree to be executed where there has been an appeal.*] Where the Appellate Court has modified the decree of the Court below, the decree of the Appellate Court supersedes entirely that of the lower Court, and is the only decree which can be executed. *Shohrat Singh* v *Bridgman*, I. L. R. 4 All. 376; *Gobardhan Das* v. *Gopal Ram*, I. L. R. 7 All. 366; *and Muhammad Sulaiman Khan* v. *Muhammad Yar Khan*, I. L. R. 11 All. 267, referred to. NOURANG RAI *v.* LATIF CHAUDHRI.

[I. L. R. 13 All. 394

21.—*Transfer of Property Act, ss 92, 93—Appeal against a decree for redemption—Time fixed for redemption.*] A mortgagor obtained a decree for redemption of his mortgage "within six months from the date of this decree." The mortgagee appealed, but the Appellate Court confirmed the decree. The mortgagor sought to redeem within six months from the date of the appellate decree, but more than six months from the date of the original decree:—*Held*, that though the decree of the Appellate Court became the final decree in the suit, and the only one capable of execution, yet unless the time for payment of the redemption money has been postponed under s. 93 of the Transfer of Property Act, or the decree of the original Court has been modified by an order on the appeal that the redemption money should be paid within six months of the date of the Appellate Court decree, the mortgagor may lose his right of redemption: the Court therefore, to which pplication for execution was made should, before

EXECUTION OF DECREE—*continued.*

(5) DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*continued.*

passing orders on the application, have given the plaintiff time to apply to the District Court to amend the decree under Transfer of Property Act, s. 92. MANAVIKRAMAN *v.* UNNIAPPAN.

[I. L. R. 15 Mad. 170

22.—*Decree for redemption of mortgage—Payment of the mortgage amount within three months—Absence of foreclosure clause—Appeal by mortgagee—Payment by mortgagor of the decretal amount after the expiration of three months—Withdrawal of the appeal by mortgagee—Computation of time for execution.*] In a redemption-suit filed by the plaintiffs (the mortgagors), they obtained a decree on the 1st March 1886, whereby they were directed to pay the defendant (the mortgagee) the sum of Rs. 649-11-0 within three months, whereupon they were to get possession of the mortgaged property. The decree contained no clause of foreclosure in the event of non-payment. On the 19th April 1886, the defendant appealed to the High Court against the decree. On the 12th October 1886, long after the expiration of the three months prescribed by the decree, the plaintiff paid Rs. 649-11-0 into the lower Court, and applied for execution of the decree. The Court made an order allowing the payment and granted execution, holding that it had power to extend the time for payment and that there were good grounds for doing so in this case. The defendants appealed and the High Court discharged that order on the ground that the Court executing a decree had no power to enlarge the time. On the 15th July 1890, the defendant obtained an order from the High Court permitting him to withdraw his appeal. The plaintiff then presented an application for execution of the original decree, contending that the order for withdrawal of the appeal was equivalent to a decree of the Appellate Court, and that where there was an appeal the time prescribed by the original decree ran from the date of the appellate decree. At the date of this application the money which the plaintiff had paid on the 12th October 1886, was still in Court:—*Held*, that the withdrawal of the appeal would not afford a fresh starting point, as the withdrawal rendered it unnecessary for any decree to be drawn up and the only decree which could be executed was that which was passed by the original Court in March 1886. CHUDASAMA MANABHAI MADARSANG *v.* ISHWARGAR BUDHAGAR.

[I. L. R. 16 Bom. 243

23.—*Execution of High Court's order for costs—Procedure applicable to High Court's order in revisional jurisdiction—Civil Procedure Code, 1882, s. 647.*] The same procedure that applies to High Court decrees in appellate jurisdiction must also be applied, under s. 647 of the Code of Civil Procedure (Act XIV of 1882), to the High Court's orders in revisional jurisdiction. Application to execute the latter must be made to the Court which passed the decree against which the revisional

EXECUTION OF DECREE—*continued.*

(5) DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*continued.*

application was preferred; and that Court must proceed to execute the decree. or order, passed on revision, according to the rules prescribed for the execution of its own decrees. GOLD *v.* GOLDENBERG.

[I. L. R. 16 Bom. 550

24—*Execution pending appeal—Landlord and tenant—Enhancement of rent—Decree for enhanced rent, and in default possession to be given—Possession taken pending appeal—Decree confirmed on appeal—Time for complying with decree—Application by defendants to be restored to possession on payment of amount ordered by appellate decree.*] On the 13th February 1889, the plaintiffs obtained in the District Court of Satara a decree. on appeal against the defendants, who were their tenants, ordering them to pay Rs. 34 as the rent of certain land for the year 1882-83; and Rs. 50 a year as rent from the 5th April 1883. on which date the plaintiffs had given them notice of enhancement. In default of payment by the defendants the plaintiffs were to take possession of the land. The plaintiffs were to give the defendants credit for any sums which they had paid as rent since the year 1882-83. Both parties appealed to the High Court from this decree. While these appeals were still pending, the plaintiffs on the 13th February 1890, applied for execution of the decree. They prayed for immediate possession and for Rs. 334 alleged to be the rent due under the decree, *viz.*, Rs. 34 for 1882-83, and Rs. 50 for each of the six years from 1883-84 to 1888-89 inclusive. The application was granted by the Subordinate Judge, and the plaintiffs obtained possession on the 19th February 1890. On the 20th March 1890, the defendants applied to be restored to possession, stating that they had appealed to the High Court against the decree of the District Court. which had fixed their rent at the enhanced rate of Rs. 50, and that their appeal was still pending; that the sum of Rs. 334 was not due to the plaintiffs, inasmuch as they (the defendants) had continued to pay the rent at the old rate (*viz.*, Rs. 34) to the village officers together with the local fund cess Rs. 2-2-0. being a total of Rs 36-2-0 for each of the six years. They contended that the plaintiffs were thus entitled only to Rs 83-4-0, and not Rs. 334. and they claimed to get back the land on the ground that the plaintiffs had obtained possession on an illegal application While this application of the 20th March 1890 was still pending, the appeals against the District Court's decree of the 13th February 1889 came on for hearing before the High Court, which confirmed that decree on the 17th July 1890. Thereupon the defendants on the 1st August 1890, brought into Court Rs. 98 (being the difference between the old rent which they had paid, and the enhanced rent payable under the confirmed decree) and applied to be restored to possession. On the 6th February 1891, the defendants' application of the 20th March 1890, came on for hearing. and was rejected by the Subordinate Judge on the ground that the defendants had not obeyed the

EXECUTION OF DECREE—*continued.*

(5) DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW—*concluded.*

District Court's decree. The defendants thereupon appealed to the District Court, which reversed that decision and ordered that possession should be given to the defendants on the ground that the time for payment of the amount due under the decree should be reckoned from the date of the confirmation of the decree by the High Court, *viz.*, 17th July 1890, and that by their payments made to the village officers and their payment into Court on the 1st August 1890, the defendants had obeyed the decree and were entitled to be put back into possession. The plaintiffs appealed to the High Court:—*Held* (reversing the order of the District Court and restoring that of the Sub rdinate Judge), that the defendants could not recover possession. The fact that they had appealed to the High Court could not prevent the decree of the District Court from being executed, or enlarge the time for payment of the rent as decreed by that Court. No stay of execution was asked for. and all that the Subordinate Judge had to see in February 1890, was whether payment of rent had been made in accordance with the terms of the decree of the District Court made on the 13th February 1889. The defendants had not paid that rent when the plaintiffs executed the decree on the 19th February 1890. The decree was legally executed before the High Court's decree was passed on the 17th July 1890, and that execution could not be afterwards cancelled, because of the High Court's decree. When the decree of the District Court was passed the defendants should at once have paid to the village officers the balance of the rent due according to that decree. or, on the second appeal to the High Court being made, they should have applied for stay of execution. They followed neither course. and the decree was legally executed. The claim in the plaintiffs' application for execution may have been excessive. but the defendants had never attempted to pay anything beyond the old rent. AMINABI *v.* SIDU.

[I. L. R. 17 Bom. 547

(6) DECREES UNDER THE RENT LAW.

25.—*Execution of rent-decree obtained against a putnidar—Property other than the tenure proceeded against—Bengal Tenancy Act (VIII of* 1885), *s.* 65.] Where a landlord obtains a decree for rent against his tenant, which is on the face of it a decree for a sum of money without creating a charge upon the tenure, he is at liberty in execution to bring to sale property of his judgment-debtor oth r than the tenure itself. Section 65 of the Bengal Tenancy Act creates a first charge upon the tenure for its rent and puts the landlord in the position of a first mortgagee so far as the rent is concerned, but the tenant remains personally liable for the rent. so that the landlord has a charge upon the tenure for the rent, and he has a remedy against the tenant personally for the debt to him, and he has therefore a right to avail himself of either of these remedies. TARINIPROSAD ROY *v.* NARAYAN KUMARI DEBI.

[I. L. R. 17 Calc. 301

EXECUTION OF DECREE—*continued.*

(7) NOTICE OF EXECUTION.

26.—*Civil Procedure Code, s.* 248—*Condition precedent—Execution of decree against legal representative.*] The issuing of the notice required by s. 248 of the Code of Civil Procedure is a condition precedent to the execution of a decree against the legal representative of a deceased judgment-debtor. GOPAL CHUNDER CHATTERJEE *v.* GUNAMONI DASI.

[I. L. R. 20 Calc. 370

27.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 248—*Effect of omission to give notice of execution—Auction-purchaser.*] Where in execution of a decree, for the execution of which a notice to the judgment-debtor was necessary under s. 248 of the Civil Procedure Code, certain moveable property was attached and sold without any such notice having been given:—*Held*, that the proceedings in execution were void and of no effect, and it made no difference that the auction-purchaser was a third party and not the decree-holder. *Imamunnissa Bibi* v. *Liakat Husain*, I. L. R. 3 All. 424, followed; *Rameswri Dassee* v. *Doorgadass Chatterjee*, I. L. R. 6 Calc. 103, referred to. SAHDEO PANDEY *v.* GHASIRAM GYAWAL.

[I. L. R. 21 Calc. 19

(8) TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION.

28.—*Power of Court passing decree to execute it—Portion of property out of jurisdiction—Civil Procedure Code* (*Act XIV of* 1882), *s.* 223.] The Court that has the power to pass a decree for sale of a property has also power to carry out its decree by selling that property, whether any portion of that property be within the local limits of its jurisdiction or not. *Per* GHOSE, J., s. 223, clause (*c*) of the Civil Procedure Code leaves it to the discretion of the Court to send the decree for execution to the Court having local jurisdiction. *Maseyk* v. *Steel & Co.*, I. L. R. 14 Calc. 661, commented on. GOPI MOHAN ROY *v.* DOYBAKI NUNDUN SEN.

[I. L. R. 19 Calc. 13

29.—*Civil Procedure Code, s.* 223—*Transfer not through District Court.*] Two decrees were passed against the same defendant in the Court of a District Munsif and on the Small Cause side of a Subordinate Court in the same District, respectively. The holder of the decree in the Small Cause suit attached and brought to sale the judgment-debtor's interest in a benefit fund. The other decree-holder applied for rateable distribution, his decree having been transferred for execution to the Subordinate Court directly and not through the District Court:—*Held* (1) that the direct transfer of the decree of the District Munsif was not illegal; (2) that the Subordinate Judge had inherent jurisdiction to execute the decree of the District Munsif. KELU *v.* VIKRISHA.

[I. L. R. 15 Mad. 345

EXECUTION OF DECREE—*continued.*

(8) TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*contd.*

30.—*Agreement for satisfaction of judgment debt by instalments—Civil Procedure Code, ss.* 210, 230, 257*A*—*Act XV of* 1877 (*Limitation Act*), *Sch. ii., Art.* 179.] A simple money-decree was passed in 1871, and was transferred to another Court for execution, and in June 1882 an application was made for execution; and, shortly afterwards, the Court to which the decree had been transferred sanctioned an agreement between the parties for satisfaction of the decree by instalments. In June 1885, an application was made to the Court which passed the decree to again transfer it for execution, and this application recited the previous agreement and certain payments which had been made, and it was granted. A further application for execution for the remaining instalments was made in April 1888:—*Held*, by EDGE, C. J., that the Court to which the decree was transferred had no power in 1882, to sanction the agreement under s. 257A of the Civil Procedure Code; that if the order in June 1885, of the Court passing the decree were regarded as a sanction (which it would be very difficult to hold), that order nevertheless, could not operate as one under s. 210 altering the decree; that if any decree in the case were capable of execution it was the decree of 1871, which had never been altered by a Court; and that inasmuch as a previous application for execution had been made in June 1882, that decree was dead, as well under s. 250 of the Code, as under art. 179, sch. ii of the Limitation Act (XV of 1877). *Held*, by STRAIGHT, J., that the order of June 1885 was not, and could not be, an order sanctioning the agreement of June 1882, and the decree consequently stood unaltered; and, an application to execute it having been made and granted since Act XIV of 1882 came into operation, the decree was now dead under s. 230 of the Code. *Per* EDGE, C. J.—The Court to which a decree has been transferred for execution has no power to sanction an agreement under s. 257A of the Code for satisfaction of the decree by instalments, but such sanction can be given only by the Court which passed the decree. An agreement sanctioned under s. 257A cannot be treated without anything more, as a decree of the Court, and cannot operate as an order under s. 210, though an order under s. 210 would operate as a sanction under s. 257A. The decree in a suit which must be executed is the decree as originally passed or as altered by a proper order for that purpose, as, *e.g.*, by an order under s. 210. GANDHARAP SINGH *v.* SHEODARSHAN SINGH.

[I. L. R. 12 All. 571

31.—*Power of Court to decide whether execution is barred by limitation—Question of limitation—Civil Procedure Code* (*Act XIV of* 1882), *s.* 223 *et seq.*] Where a Court makes an order for execution of a decree and transmits the decree for execution to another Court, the latter Court has no power to determine whether execution is barred by limitation. The order for execution

EXECUTION OF DECREE—*continued.*

(8) TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT AS TO EXECUTION OUT OF ITS JURISDICTION—*concld.*

made by the transmitting Court is binding on the parties until reversed on appeal. It is otherwise, however, where the transmitting Court has made no order for execution, but has merely transmitted the decree and the certificate of non-satisfaction. HUSEIN AHMAD KAKA *v.* SAJU MAHAMAD SAHID.

[I. L. R. 15 Bom. 28

(9) DECREES OF COURTS OF NATIVE STATES.

32.—*Civil Procedure Code* (*Act XIV of* 1882), *ss.* 229*A and B and* 245*B—Foreign judgment—Execution in British India of Foreign judgment—Decree obtained without jurisdiction and by fraud—Jurisdiction.*] The plaintiff obtained a decree against the defendant in the Zilla Court of Angikarmal, in the State of Cochin. The defendant was a resident in Bombay and the plaintiff sought to execute the decree against him in Bombay. Notice under s. 245B of the Civil Procedure Code (Act XIV of 1882) was served upon the defendant calling upon him to show cause why he should not be committed to jail in execution. The plaintiff relied upon s. 229B of the Civil Procedure Code. The defendant, as cause against the execution of the decree, alleged that the decree was passed by the Cochin Court without jurisdiction, and that it had been fraudulently obtained by the plaintiff. The Court refused to commit the defendant:—*Held*, on the facts as presented in the affidavit, that the Court in Cochin had no jurisdiction over the defendant, and that the plaintiff obtained the decree by misrepresentation and concealment of essential facts. *Held*, also, that the Court was entitled to exercise a judicial discretion as to whether it would put into force the provisions of s. 229B of the Civil Procedure Code. No duty is cast upon the Court to execute a decree which can be shown to have been passed without jurisdiction or obtained by fraud. Section 229B of the Civil Procedure Code does not remove the decree of a Native State falling within its purview from the category of foreign judgments. It merely alters the procedure by which such a judgment can have effect given to it in British India. Notwithstanding the section, such a decree still remains a foreign judgment, and its effect is removed by showing want of jurisdiction in the Court which passed it. The Court is not bound to execute the decree of a foreign Court which has been obtained by the fraud of the plaintiff. Where execution of such a decree is sought, relief can only be obtained by pointing out the fraud to the executing Court and asking that Court to refrain from executing the decree. The Court will not send British subjects subject to its territorial jurisdiction into a foreign country to seek to be relieved from a fraudulently obtained decree, but will itself refuse to give effect to such a decree. MUSA HAJI AHMED *v.* PURMANAND NURSEY.

[I. L. R. 15 Bom. 216

EXECUTION OF DECREE—*continued.*

(10) MODE OF EXECUTION.

(*a*) GENERALLY.

33.—*Decree of Appellate Court—Decree referring to Judgment.*] Where the judgment of an Appellate Court directed that a certain sum over and above what had been decreed to him in the Court of First Instance should be decreed to the appellant, but the decree of the Appellate Court did not specify the sums that would be due to the appellant under that decree, except by reference to the judgment on which it was based and to the decree of the Court of First Instance:—*Held*, that though the decree as thus drawn was informal, yet, as the amount due to the decree-holder was ascertainable from the record, and the decree was thus practically capable of execution, execution should, as a matter of equity, be granted to the decree-holder. JAWAHIR MAL *v.* KISTUR CHAND.

[I. L. R. 13 All. 343

(*b*) COSTS.

34.—*Civil Procedure Code, s.* 267—*Order made by a Judge in Chambers on client to pay taxed costs of his attorney — Right of attorney to execute such order as a decree—Rule* 183 *of Rules of High Court, Bombay.*] An order obtained from a Judge in Chambers by an attorney against his client for the payment of costs, is a decree or order to the execution of which the provisions of Chapter XIX of the Civil Procedure Code (XIV of 1882) apply. Section 267 of the Civil Procedure Code is applicable to all the property of the judgment-debtor out of which the decree can be satisfied either by delivery in obedience to the decree or by sale. The words "liable to be seized" contained in s. 267 of the Civil Procedure Code are words of description pointing out the kind of property in respect of which an enquiry can be held, *viz.*, any property which is attachable under the decree. Property of a judgment-debtor which he has mortgaged is *primâ facie* liable to be seized in execution of a decree against him, and the fact that he has mortgaged it will not prevent its being attached and sold in execution of the decree subject to the mortgage-debt. A person may be examined, under s. 267, in respect of property which is *primâ facie* the property of the judgment-debtor, even although such person may allege that he is a mortgagee in possession of the attached property. IN RE PREMJI TRIKUMDAS.

[I. L. R. 17 Bom. 514

See ASSUR PURSHOTAM *v.* RUTTONBAI.

[I. L. R. 16 Bom. 152

(*c*) MAINTENANCE.

35.—*Future maintenance, right to recover, in execution of decree awarding maintenance.*] Future maintenance awarded by a decree when falling due can be recovered in execution of that decree without further suit. ASHUTOSH BANNERJEE *v.* LUKHIMONI DEBYA.

[I. L. R. 19 Calc. 139

EXECUTION OF DECREE—*continued.*

(10) MODE OF EXECUTION—*continued.*

(*d*) MORTGAGE.

36.—*Conditional decree for sale not made absolute.*] A conditional decree for the sale of mortgaged property under s. 88 of the Transfer of Property Act (IV of 1882) cannot be executed unless and until it is made absolute by an order passed under s. 89. RAM LAL *v.* NARAIN.

[I. L. R. 12 All. 539

37.—*Transfer of Property Act (IV of 1882), s. 90—Nature of decree contemplated by that section.*] The plaintiff obtained a decree on a hypothecation-bond, the decree providing that the money secured by the bond was to be realised by sale of the hypothecated property, and, if that proved insufficient to satisfy the decree, by sale of other property of the judgment-debtor. The hypothecated property was sold, and the proceeds were not sufficient to satisfy the decree. The decree-holder thereupon applied for enforcement of that portion of the decree which related to the other property of the judgment-debtor. To this application it was objected that it was necessary to obtain a decree under s. 90 of the Transfer of Property Act (IV of 1882). This objection was allowed, and the decree-holder applied for and obtained a decree under the said section. The judgment-debtor then appealed against that decree on the ground, amongst others, that, looking to the terms of the original decree, the application under s. 90 was superfluous:—*Held*, that the decree contemplated by s. 90 of the Transfer of Property Act is, in fact, an order to be obtained in execution of a decree for sale; and though in the present instance the application for such a decree may have been superfluous, it may nevertheless be regarded as an application for execution of a decree by enforcement of a portion of it against property other than the mortgaged property. *Miller* v. *Digambari Debya*, Weekly Notes, 1890, p. 142, distinguished; *Hafiz-ud-din Ahmad* v. *Damodar Das*, Weekly Notes, 1889, p. 149, and *Raj Singh* v. *Parmanand*, I. L. R. 11 All. 486, referred to. DURGA DAI *v.* BHAGWAT PRASAD.

[I. L. R. 13 All. 356

38.—*Transfer of Property Act (IV of 1882), s. 90.—Decree against the person and other property of the judgment-debtor as well as against the property mortgaged.*] In a suit for enforcement of a mortgage security the plaintiff prayed for a decree both as against the mortgaged property, and also, in the event of the mortgaged property not realising sufficient to satisfy his claim, as against the other property and the persons of the defendants, and the decree which the plaintiff obtained was framed in accordance with the prayer in the plaint, that is to say, the decree expressly provided that, should the mortgaged property not realise sufficient to satisfy the amount decreed to the plaintiff, the other property of three, and the persons of two, of the judgment-debtors were to be liable:—*Held*, that such a decree could be executed against the persons and other property of the parties named therein, without its being necessary for the decree-holder to obtain a separate decree under s. 90 of the Transfer of Property Act. *Miller* v. *Digambari Debya*, Weekly Notes, 1890, p. 142, referred to. BATAK NATH *v.* PITAMBAR DAS.

[I. L. R. 13 All. 360

39.—*Rights of mortgagee in respect of non-hypothecated property of the mortgagor—Res judicata—Transfer of Property Act (IV of 1882), ss. 68, 88, 89 and 90—Civil Procedure Code, Sch. iv, forms Nos. 109 and 128.*] Where there is nothing to show a contrary intention of the parties, every mortgage carries with it a personal liability to pay the money avanced; but a mortgagee must sue for his remedy against the property first. In so doing it is immaterial whether or not he prays in his plaint for relief against non-hypothecated property. Unless in exceptional cases he can obtain such relief only under the provisions of s. 90 of the Transfer of Property Act, and if such relief is refused, the refusal will not bar a subsequent application under s. 90 *Hafiz-ud-din Ahmad* v. *Damodar Das*, Weekly Notes, 1889, p. 149, approved; *Batak Nath* v. *Pitambar Das*, I. L. R. 13 All. 360, distinguished; *Sutton* v. *Sutton*, L. R. 22 Ch. D. 515; *Raj Singh* v. *Parmanand*, I. L. R. 11 All. 486; *Miller* v. *Digambari Debya*, Weekly Notes, 1890, p 142; and *Durga Dai* v. *Bhagwat Prasad*, I. L. R 13 All. 356, referred to. Observations on the meaning and application of ss. 88, 89 and 90 of the Transfer of Property Act. Explanation of the term "legally recoverable" in s. 90. *Sonatun Shah* v. *Ali Newaz Khan*, I. L. R. 16 Calc. 423, discussed. MUSAHEB ZAMAN KHAN *v.* INAYAT-UL-LAH.

[I. L. R. 14 All. 513

40.—*Transfer of Property Act, s. 90—Meaning of the term "legally recoverable."*] A decree-holder having obtained separate decrees against his judgment-debtor on two unregistered bonds, each for a sum of less than Rs. 100, hypothecating one and the same property, took out execution on one bond and brought to sale the hypothecated property, which was purchased by a third party. The sum for which that property was sold was only sufficient to satisfy one decree, and the decree-holder accordingly, within three years from the date when the latter of the two bonds fell due, applied for a decree under s. 90 of the Transfer of Property Act:—*Held*, that under the above circumstances, there was a balance legally recoverable otherwise than out of the property sold, and that the decree-holder was therefore entitled to a decree under s. 90. *Musaheb Zaman Khan* v. *Inayat-ul-lah*, I. L. R. 14 All. 513, referred to. BAGESHRI DIAL *v.* MUHAMMAD NAQI.

[I. L. R. 15 All. 331

41.—*Court executing decree not competent to go behind its terms—Transfer of Property Act (IV of 1882), ss. 88, 90.*] Where a decree on a hypothecation-bond besides decreeing sale of the hypo-

EXECUTION OF DECREE—*continued.*

(10) MODE OF EXECUTION—*concluded.*

(*d*) MORTGAGE—*concluded.*

thecated property purported also to grant relief against the person and non-hypothecated property of the judgment-debtor, and such decree remaining unchallenged became final in its entirety:—*Held*, that it was competent to the decree-holder by application for execution of the decree to proceed against the non-hypothecated property of his judgment-debtor, and it was not necessary for him to apply to the Court for a decree under s. 90 of the Transfer of Property Act. *Musaheb Zaman Khan* v. *Inayat-ullah*, I. L. R. 14 All. 513, distinguished. LALJI LAL *v.* BARBER.

[I. L. R. 15 All. 334

42.—*Mortgage by one owner of undivided share of estate—Rights of mortgagee on partition where the undivided share is allotted to a sharer other than the mortgagor—Execution not against mortgaged property but against property allotted to mortgagor.*] Where *A* mortgaged to the plaintiff his undivided share in certain land which he held jointly with *B*. and subsequently to the mortgage, by a decree in a partition-suit to which the plaintiff was not a party, the mortgaged property was allotted to *B*. other property in substitution being allotted to *A*:—*Held*, in a suit against *B* and the representatives of *A*, to recover the sum due on the mortgage by sale of the mortgaged property, that the plaintiff could not proceed against the mortgaged property which had been allotted on partition to *B*, but should be allowed to proceed against that which had been allotted in substitution to *A*. his mortgagor. *Byjnath Lall* v. *Ramoodeen Chowdhry*, L. R. 1 I. A 1 6; 21 W. R. 233, followed in principle. HEM CHUNDER GHOSE *v.* THAKO MONI DEBI.

[I. L. R. 20 Calc. 533

43.—*Transfer of Property Act, ss.* 88. 90—*Decree not satisfied after sale of mortgaged property—Procedure necessary to obtain balance of decree.*] Where a decree-holder has obtained a decree under s. 88 of the Transfer of Property Act. and on sale of the mortgaged property the proceeds of sale are insufficient to satisfy the decree, he must, unless the decree gives him the right to proceed against other property or against the person of his judgment-debtor, apply under s. 90 of the Act for a decree for the balance remaining unsatisfied. LALLA TIRHINI SAHAI *v.* LALLA HURRUK NARAIN.

[I. L. R. 21 Calc 26

(11) EXECUTION BY AND AGAINST REPRESENTATIVES.

44.—*Civil Procedure Code*, 1882, *s.* 234—*Execution of a decree against the son of a Hindu judgment-debtor—Determination of questions as to the binding nature of the decree debt.*] In execution of a money-decree passed against a Hindu since deceased, ancestral property in the possession of his son was attached. A petition by the son objecting that the property was not liable to be attached in his hands was dismissed:—*Held*,

EXECUTION OF DECREE—*continued.*

(11) EXECUTION BY AND AGAINST REPRESENTATIVES—*continued.*

that the order dismissing the petition was wrong, for when a judgment-creditor seeks to attach ancestral property after it has vested in the son by survivorship under Hindu law upon the father's death, he cannot be considered as executing the decree against the property of the deceased judgment-debtor within the meaning of s. 234 of the Code of Civil Procedure. VENKATARAMA *v.* SENTHIVELU.

[I. L. R. 13 Mad. 265

45—*Legal representative of a joint undivided Hindu in respect of ancestral immoveable property attached in execution — Civil Procedure Code, s.* 248—*Notice of execution.*] The plaintiff and his brother were joint undivided brothers possessed of certain immoveable property. This property was attached in execution, but before a warrant for sale of the property was obtained the plaintiff died. The attaching creditor issued a notice, under s. 248 of the Civil Procedure Code (XIV of 1882), addressed to the brother and widows of the plaintiff as his "legal representatives" within the meaning of that section, calling on them to show cause why execution should not proceed against them:—*Held*, that his widows, and not his brother, were the plaintiff's legal representatives for this purpose, for it must be as *quasi*-separate property of the deceased plaintiff that the attaching creditor had a claim to it. If it were to be treated as joint property, he could have none, for the deceased's interest would then have disappeared, having gone by survivorship to his brother. NANABHAI GANPATRAO *v.* JANARDHAN VASUDEOJI.

[I. L. R. 16 Bom. 636

46.—*Ascertainment of a defendant's liability by an operative decree after the declaration of his general liability in a prior decree—His death in the interval between such decrees and effect, in execution, of his representatives not being parties to the operative one—Mesne profits, decree for—Non-joinder of parties.*] An operative decree, obtained after the death of a defendant, ascertaining for the first time, the extent and quality of his liability, the latter having been already declared in general terms in a prior decree, cannot bind the representatives of the deceased, unless they were made parties to the suit in which such ascertainment was pronounced. The question of the amount of mesne profits due, they having been decreed together with the possession of land in 1856, against a body of village proprietors, was not decided till 1877. In that year an operative decree was made against the village proprietors whose names appeared as defendants in the suit of 1856, and in 1881 execution-proceedings were taken against the present plaintiffs, attributing to them the character of heirs of the original judgment-debtors:—*Held*, that the right to execute for mesne profits was not wholly dependent upon whether or not the ancestor of the present plaintiffs had been a party to the decree of 1856, which did not ascertain the amount of the profits, or determine whether the

EXECUTION OF DECREE—*concluded.*

(11) EXECUTION BY AND AGAINST REPRESENTATIVES—*concluded.*

then defendants were liable, jointly or severally, in respect of the wrongful possession. Before the issue of a money-decree which was capable of being put into execution, the alleged ancestor of the present plaintiffs was dead, and the latter, not having been parties to that decree, were not liable under it. RADHA PRASAD SINGH *v.* LAL SAHAB RAI.

[I. L. R. 13 All. 53
[L. R. 17 I. A. 150

(12) JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER.

47.—*Civil Procedure Code, ss.* 231, 258—*Application for uncertified payment to one decree-holder.*] One of two holders of a joint decree applied for execution of the decree to the full amount. It appeared that the other decree-holder had received a certain sum from the judgment-debtor on account of the decree out of Court, but this payment had not been certified:—*Held*, that the payment was valid only to the extent of the share to which the payee was entitled, and that this share having been ascertained and credit given for it, the decree should be executed in favour of the present applicant for the balance. SULTAN MOIDEEN *v.* SAVALAYAMMAL.

[I. L. R. 15 Mad. 343

(13) STAY OF EXECUTION.

48.—*Civil Procedure Code*, 1882, *s.* 545—*Notice to decree-holder—Practice—Affidavit.*] A final order for staying the execution of a decree should not be made without giving the decree-holder notice of the judgment-debtor's application. The application should be supported by an affidavit. MULTANCHAND SHIVRAM *v.* KHARSEDJI NASARVANJI.

[I. L. R. 15 Bom. 536

49.—*Civil Procedure Code*, 1882, *s.* 546—*Application for stay of sale of immoveable property in execution of money-decree under appeal.*] An application under the third paragraph of s. 546 of the Code of Civil Procedure to stay the sale of immoveable property in execution of a decree for money against which an appeal has been filed must be made to the Court which passed the decree and not to the Appellate Court. *Gossain Money Puree* v. *Gour Pershad Singh*, I. L. R. 11 Calc. 146, referred to. IN THE MATTER OF THE PETITION OF MURAD-UN-NISSA.

[I. L. R. 15 All. 196

EXECUTOR.

See PROBATE—TO WHOM GRANTED.

[I. L. R. 21 Calc. 195

——, By implication.

See PROBATE—TO WHOM GRANTED.

[I. L. R. 15 Mad. 360

EXECUTOR—*concluded.*

——, de son tort.

See TRUST.

[I. L. R. 17 Calc. 620

——' of shareholder, rights of.

See DECLARATORY DECREE, SUIT FOR—DECLARATIONS OF TITLE.

[I. L. R. 17 Bom. 197

EXHIBITS, APPLICATION TO ALTER ENDORSMENT ON.

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE.

[I. L. R. 21 Calc. 476

EXPECTANCY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EXPECTANCY.

[I. L. R. 18 Calc. 164

EXTRADITION.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 17 Bom. 369

FACTOR.

See PRINCIPAL AND AGENT—COMMISSION AGENTS.

[I. L. R. 17 Bom. 520

FALSE CHARGE.

Penal Code, s. 211—*False charge made to Police—Institution of criminal proceedings—Penal Code, s.* 211.] A person who sets the criminal law in motion by making a false charge to the Police of a cognizable offence institutes criminal proceedings within the meaning of s. 211 of the Penal Code; and if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided. KARIM BUKSH *v.* QUEEN-EMPRESS.

[I. L. R. 17 Calc. 574

FALSE EVIDENCE.

See CRIMINAL PROCEDURE CODE, S. 487.

[I. L. R. 14 All. 354

1.—*Penal Code, ss.* 191, 193—*Statements to Police-officers investigating under Criminal Procedure Code, s.* 161.] The provisions of ss. 191 and 193 of the Penal Code do apply to the case of false statements made under s. 161 of the Code of Criminal Procedure, 1882. QUEEN-EMPRESS *v.* BHAGWANTIA.

[I. L. R. 15 All. 11

2.—*Penal Code, s.* 193—*Giving false evidence—Omission to prove that accused was sworn or affirmed—Oaths Act (X of* 1873), *ss.* 6, 13, 14.] The offence of intentionally giving false evidence, referred to in s. 193 of the Penal Code, may be committed, although the person giving evidence has neither been sworn nor affirmed. GOBIND CHANDRA SEAL *v.* QUEEN-EMPRESS.

[I. L. R. 19 Calc. 355

FALSE EVIDENCE—*concluded.*

3.—*Penal Code, ss.* 193, 199—*Proceedings by District Judge without jurisdiction—Bengal Tenancy Act*, 1885, *s.* 95] The Bengal Tenancy Act does not authorise a proceeding calling upon a person to show cause why he should not make over documents and papers belonging to an estate of which a common manager has been appointed. A person giving false evidence in such proceeding cannot be convicted under s. 193 or s. 199 of the Penal Code. ABDUL MAJID *v.* KRISHNA LAL NAG.

[I. L. R. 20 Calc. 724

4.—*Oaths Act* (*X of* 1873), *ss.* 5, 14.—*Criminal Procedure Code* (*Act X of* 1882). *s.* 164—*Magistrate, power of.*] A Magistrate, acting under Criminal Procedure Code, s. 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting. QUEEN-EMPRESS *v.* ALAGU KONE.

[I. L. R. 16 Mad. 421

5.—*Registration Act* (*III of* 1877), *s.* 82—*Penal Code* (*Act XLV of* 1860). *s.* 193—"*Judicial proceeding*"—*Delegation of powers by District Registrar.*] It is no offence to make a false statement before a person purporting to act in execution of the Registration Act, but not legally authorised so to do. RADHIKA MOHAN KURI *v.* LAL MOHAN SHA.

[I. L. R. 20 Calc 719

FALSE PERSONATION.

Evidence as to identity of heirs of estate.] Where the main question was whether, in fact, the heir to an estate, a minor in possession through the manager under the Court of Wards, had been, as the plaintiff alleged him to have been, put forward by false personation, a Divisional Court of Appeal decided in favour of the defence and dismissed the suit. Pending this decision, a Full Bench disposed of questions of law as to the admissibility in evidence in this suit of the judgment and record in a prior suit; in which it had been found, as a fact, that there had been, at one time, in existence an heir born of the parentage which the defence in this suit alleged to be that of the minor defendant. It was disputed in the present suit whether the minor defendant was the same individual whom his alleged mother, the defendant in the former suit (there being the same plaintiff in both suits), stated to be her son; also, whether, if that indentity were proved, the suit would be barred as *res judicata*. This latter question was decided in the negative by the Full Bench, which held the judgment in the former suit not to be conclusive upon the present one; but also held the record to be admissible. There was no appeal from that decision; and on an appeal from the decree of the Divisional Court, the Judicial Committee affirmed, on the facts, the decree made. PALAKDHARI SINGH *v.* COLLECTOR OF GORAKHPUR.

[I. L. R. 15 All. 261

FAMILY, MANAGEMENT OF.

See MALABAR LAW—CUSTOM.

[I. L. R. 13 Mad. 209

FAMILY DWELLING-HOUSE.

See HINDU LAW—FAMILY DWELLING-HOUSE.

[I. L. R. 17 Bom. 398

FERRY.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.

[I. L. R. 19 Calc. 253

——, Right of.

See SPECIFIC RELIEF ACT, s. 9.

[I. L. R 13 Mad. 54

Infringement of rights of ferry—Right to restrain party starting second ferry—Crown grant—User—Limitation Act (*XV of* 1877), *ss.* 23, 26, 27, 28—*Nuisance—Cause of action.*] In a suit brought to establish the right to a ferry franchise and to restrain the working of a rival ferry:—*Held* that there is nothing in the law of Bengal as it was before the acquisition by the British Government or in the Regulations before or after 1793 to show that any person is entitled to claim a monopoly of a right of ferry by prescription or by any other means than a grant from the Crown. To such a monpoly Part IV (ss. 26, 27, 28) of the Limitation Act of 1877 relating to the acquisition of ownership by prescription is not applicable. The franchise of a ferry is not necessarily appurtenant to land, but where a right of ferry was claimed as appurtenant to certain villages:—*Held*, that the grant of such right by the Crown would not be destroyed by mere non-user without waiver, nor by the running of an opposition ferry. The franchise would continue as long as the grant continued, and until the person who set up an opposition ferry could show a Crown grant, or give evidence from which a Crown grant could be presumed, the cause of action would remain. The disturbance of a right of ferry is in the nature of a nuisance, (*Yard* v. *Ford*, 2 Saunders, 172), and the cause of action in the case of the violation of this right is a continuing wrong within s. 23 of the Limitation Act. NITYÀHARI ROY *v.* DUNNE.

[I. L. R. 18 Calc. 652

FIDUCIARY RELATIONSHIP.

See ONUS PROBANDI—DEEDS, SUIT TO ENFORCE OR SET ASIDE.

[I. L. R. 18 Calc. 545

[I. L. R. 12 All. 523

FINE.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R. 20 Calc. 687

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT.

[I. L. R. 20 Calc. 676

FINE—*concluded.*

See WHIPPING.

[I. L. R. 16 Bom. 357

—*Realization of fine after death of person fined—Moveable property—Immoveable property—Penal Code (Act XLV of 1860), s. 70—Criminal Procedure Code (Act XXV of 1861), s. 6—Criminal Procedure Code (Act X of 1882), s. 386.*] Where a person was fined under the Penal Code and died before the fine was paid, and the Magistrate ordered the fine to be realized by sale of his joint moveable property, and that being found insufficient to cover the fine, his immoveable property was also attached under the order:—*Held*, that the liability of the immoveable property of the deceased could not be enforced by distress. *Reg.* v. *Lallu Karwar*, 5 Bom. H. C. 63, followed. Section 386 of the Criminal Procedure Code is not applicable to such a case. QUEEN-EMPRESS *v.* SITA NATH MITRA.

[I. L. R. 20 Calc. 478

FIRM.

——, Member of, liability to tax.

See MADRAS MUNICIPAL ACT, s. 103.

[I. L. R. 14 Mad. 140

——, Suit by—

See LIMITATION ACT, 1877, s. 22.

[I. L. R. 17 Bom. 413

See PARTIES — ADDING PARTIES TO SUITS—PLAINTIFFS.

[I. L R. 17 Bom. 413

[I. L. R. 14 All. 524

FISHERY, RIGHT OF.

See SPECIFIC RELIEF ACT, s. 9.

[I. L. R. 18 Calc. 80

[I. L. R. 19 Calc. 544

1.—*Jalkar—Navigable river—Change in course of river.*] The *jalkar*, or right of fishing, in a navigable river is not affected by reason of the river having merely changed its course. *Grey* v. *Anund Mohun Moitro*, W. R. 1864, 108, followed; *Sibessury Dabee* v. *Lukhy Dabee*, 1 W. R. 88, distinguished TARINI CHURN SINHA *v.* WATSON & Co.

[I. L. R. 17 Calc. 963

2.—*Jalkar — Immoveable property — General Clauses Consolidation Act (I of 1868), s. 3—Transfer of Property Act (IV of 1882), s. 106.*] A *jalkar*, or right of fishery, as being a benefit arising out of land covered by water, comes within the definition of "immoveable property," set out in the General Clauses Act (I of 1868), and is therefore immoveable property under s. 106 of the Transfer of Property Act (IV of 1882). RAM GOPAL BYSACK *v.* NURUMUDDIN *alias* NOOR MAHAMED MUNDUL.

[I. L. R. 20 Calc. 446

FORECLOSURE.

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 14 All. 405

See LIMITATION ACT, 1877, ART. 132.

[I. L. R. 20 Calc. 269

——, Decree for—

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE.

[I. L. R. 20 Calc. 279

——, Notice of—

See MORTGAGE — FORECLOSURE — DEMAND AND NOTICE OF FORECLOSURE.

[I. L. R. 12 All. 189

——, Suit for—

See LIMITATION ACT, 1877, ART. 147.

[I. L. R. 16 Mad. 64

[I. L. R. 14 Bom. 269

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R. 14 Bom 506

FOREIGN COURT, JUDGMENT OF.

See DEBTOR AND CREDITOR.

[I. L. R. 16 Mad. 85

See EXECUTION OF DECREE — DECREES OF COURTS OF NATIVE STATES.

[I. L. R. 15 Bom. 216

1.—*Suit on judgment of Foreign Court—Jurisdiction of Foreign Court—Notice, want of.*] The defendants, who were British subjects, purchased goods from the plaintiff in French territory. The plaintiff sued the defendants in the French Court and obtained judgment against them, but the defendants neither resided nor owned property in French territory, and did not appear at the trial and had no actual notice of the proceedings. In a suit brought in British India on the judgment of the French Court:—*Held*, that the want of notice to the defendants was fatal to the suit. *Quære.*—Whether the French Court would have had jurisdiction (apart from the question of notice) if it had been proved that it was intended that payment should be made in French territory? BANGARUSAMI *v.* BALASUBRAMANIAN.

[I. L. R. 13 Mad. 496

2.—*Civil Procedure Code, s. 14.—Foreign judgment, suit on—Right to re-hearing of case—Waiver of objection to jurisdiction.*] In a suit upon the judgment of a Court at Bastar, it appeared that in the suit in which the judgment was pronounced, the defendant took no objection as to the jurisdiction of the Court, and that he carried on business by his agent in the Bastar territory, and that a decree was passed for the plaintiff after evidence adduced on both sides in the ordinary way:—*Held*, that the defendant was not entitled

FOREIGN COURT, JUDGMENT OF—*concluded.*

to have the case re-heard ; and that the defendant was not entitled to take objection to the jurisdiction of the Bastar Court. FAZAL SHAU KHAN *v.* GAFAR KHAN.

[I. L. R. 15 Mad. 82

FOREIGN COURT, JURISDICTION OF.

See REPRESENTATIVE OF DECEASED PERSON.

[I. L. R. 16 Mad. 405

FOREIGN COURT, RECORD OF.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[I. L. R. 12 All. 595

FOREIGN TERRITORY, OFFENCE COMMITTED IN.

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[I. L. R. 13 Mad. 423

FOREIGNER, SUIT AGAINST.

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

[I. L. R. 17 Bom. 662

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—GENERAL CASES.

[I. L. R. 17 Bom. 662

FOREST, MORTGAGE OF.

See MADRAS FOREST ACT, s. 33.

[I. L. R. 13 Mad. 322

FOREST ACT.

See MADRAS FOREST ACT.

FOREST ACT, VII OF 1878.

——, ss. 52, 73.—*Sub-Assistant Conservator of Forests—Suspicion of theft—Seizure and detention of timber—Want of a valid pass.*] A Sub-Assistant Conservator of Forests having seized timber on the suspicion that it had been stolen from the Government forests:—*Held*, that it was open to him to justify the seizure on the ground of the commission of a forest offence arising from the want of a valid pass. According to s. 52 of the Indian Forest Act (VII of 1878) a Forest Officer cannot justify the detention of goods on the ground of an offence against the forest laws, if he has not taken the course which that section requires of bringing the matter before a Magistrate. WAMAN RAMCHANDRA GAUNDE *v.* DIPCHAND BALKISAN.

[I. L. R. 15 Bom. 229

FORFEIT.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT.

[I. L. R. 20 Calc. 676

FORFEITURE.

See BOMBAY LAND REVENUE ACT, s. 153.

[I. L. R. 16 Bom. 455

See BOMBAY REVENUE JURISDICTION ACT, s. 4.

[I. L. R. 16 Bom. 455

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.

[I. L. R. 19 Calc. 289

See HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

[I. L. R. 17 Calc. 674

See CASES UNDER LANDLORD AND TENANT—FORFEITURE.

See LEASE—CONSTRUCTION.

[I. L. R. 17 Calc. 826

[I. L. R. 20 Calc. 273

See WILL—CONSTRUCTION.

[I. L. R. 20 Calc. 15

—— of rebel's property.

See LIMITATION—ACT IX OF 1859, s. 20.

[I. L. R. 13 All. 108

FORGERY.

See CRIMINAL PROCEEDINGS.

[I. L. R. 16 Bom. 729

1.—*Cheating — Using a forged document — "Fraudulently" — "Dishonestly" — Penal Code (Act XLV of 1860), ss. 24, 25, 415 & 471.*] In construing ss. 24 and 25 of the Penal Code, the primary and not the more remote intention of the accused must be looked at. *Queen-Empress* v. *Girdhari Lal*, I. L. R. 8 All. 653, cited. Under the rules of the Calcutta University a private student desiring to appear at the Entrance Examination is required to forward to the Registrar, with his application for permission to appear, a certificate to the effect, *inter alia*, that he is of good moral character and has submitted himself to a test examination by, and furnished exercises to, the person signing the certificate, sufficient in that person's opinion to show that his qualifications give a reasonable probability of his passing the examination. Such certificate has to be signed by one or other of the persons mentioned in the rules, amongst them being the head master of a high school under public management. On such certificate being sent to the Registrar and the prescribed fee paid, that officer forwards a receipt to the candidate with his roll-number thereon, which is also an authority for him to appear at the examination and enter the examination-hall. A private student forwarded to the Registrar, with his application for permission to appear, a certificate in the prescribed form, purporting to be signed by the head master of a high school, such signature, however, being, as the applicant well knew,

FORGERY—*continued.*

a forgery. The Registrar, knowing at the time that the signature of the head master was not genuine, sent to the applicant the receipt for his fee and the necessary authority allowing him to appear at the examination, and in due course the applicant appeared, took his seat in the hall at the desk allotted to him, and commenced the examination. Upon charges being preferred against the applicant of using as genuine a forged document (s. 471) and attempting to cheat (ss. 415 and 511): —*Held*, that his primary object or intention was by falsely inducing the Registrar to believe that the certificate was signed by the head master of a Government school under public management to be permitted to sit for the Entrance Examination, and that such intention could not be held to be "fraudulent" or "dishonest" within the meaning of ss. 24 and 25 of the Penal Code. *Held*, consequently, that the use of the forged document, though with the knowledge or belief that it was forged, was not fraudulent or dishonest, and that as these are essential elements to offences under ss. 471 and 415 of the Penal Code, the accused had not committed either of the offences charged. *Held*, further, that the accused had not committed any offence under the Penal Code. *Jan Mahomed* v. *Queen-Empress*, I. L. R. 10 Calc. 584, cited. QUEEN-EMPRESS *v.* HARADHAN *alias* RAKHAL DASS GHOSH.

[I. L. R. 19 Calc. 380

2.—*Penal Code, ss.* 419, 420, 467 *and* 468—*Cheating—Using false name with intent to defraud.*] The accused was alleged by the prosecution to have advertised that a work on English idioms by Robert S. Wilson, M.A., was ready, stating that the price was Rs. 2-4-0, and that intending purchasers might remit it by money order to Robert S. Wilson, Council House Street, Calcutta; to have then requested the Postal authorities at Calcutta by a letter signed Robert S. Wilson, to have the money orders re-directed to him as above at Rajam; to have similarly requested the Post Master at Rajam to pay the money orders to his clerk, Seshagiri Rau: to have subsequently received the value of money orders made out in favour of Robert S. Wilson from the Post Master at Rajam, signing receipt as Seshagiri Rau; Robert S. Wilson and Seshagiri Rau were alleged to be fictitious persons, and it was also alleged that the accused had no book on English idioms, ready to be despatched to purchasers:— *Held*, that the above allegations supported charges of cheating and forgery. QUEEN-EMPRESS v. PERA RAJU.

[I. L. R. 13 Mad. 27

3.—*Penal Code, ss.* 463, 471, *and ss.* 24 *and* 25—*Using forged document—False certificate of attendance at law lectures—"Claim"—"Property."*] The term "claim" in s. 463 of the Penal Code is not limited in its application to a claim to property. The term "property" in the same section will cover a written certificate. It is not necessary to constitute a forgery under s. 463 of the Penal Code that the property with which it is intended that the false document shall cause a person to part should be in existence at the

FORGERY—*concluded.*

time when the false document was made. *Queen-Empress* v. *Haradhan*, I. L. R. 19 Calc. 380, dissented from; *Queen-Empress* v. *Appasami*, I. L. R. 12 Mad. 151 and *Queen-Empress* v. *Ganesh Khanderao*, I. L. R. 13 Bom. 506, approved. One *S B* presented to the Principal of Queen's College, Benares, a false certificate purporting to have been granted by the Principal of Canning College, Lucknow, to the effect that he had attended a certain proportion of a certain first year course of law lectures delivered at Canning College, *S B* in fact never having attended such lectures. Had that certificate been a true one, it would have entitled *S B* to attend a further course of law lectures at any one of several associated institutions, amongst which was Queen's College, Benares, without attending or paying the fees for the first course of lectures. On presentation of the above certificate *S B* obtained permission to attend and attended a course of second year lectures at Queen's College, Benares, without attending or paying the fees required for the first year course. After *S B* had attended the above-mentioned second year course of lectures at Queen's College, Benares, he again presented the said false certificate to the Principal of Queen's College, with a view to his obtaining a consolidated certificate, which was necessary, as he alleged, to enable him to become a candidate in the Judge's Court pleadership examination in Calcutta:—*Held*, that on both occasions, when he presented the false certificate to obtain admission to the second year law class at Queen's College, Benares, and again when he endeavoured by its use to obtain the consolidated certificate in order to gain admission to the pleadership examination in Calcutta *S B* was guilty of the offence provided for by s. 471 of Penal Code. QUEEN-EMPRESS *v.* SOSHI BHUSHAN.

[I. L. R. 15 All. 210

FRANCE, LAW OF.

See COURT-FEES ACT, SCH. I, ART. 11.

[I. L. R. 20 Calc. 575

FRANCHISE, RIGHT OF.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[I. L. R. 19 Calc. 192, 195 note, 198

FRAUD.

Col.
1. Alleging or Pleading One's Own Fraud 389
2. Effect of Fraud 390

See DEBTOR AND CREDITOR.

[I. L. R. 16 Bom. 1

[I. L. R. 15 Mad. 362

See LIMITATION—ACT X OF 1859, S. 33.

[I. L. R. 20 Calc. 425

See LIMITATION ACT, 1877, S. 18.

[I. L. R. 14 Bom. 408

[I. L. R. 17 Bom. 341

FRAUD—*continued.*

See PLEADER—PURCHASE BY PLEADER AT SALE IN EXECUTION OF DECREE.

[I. L. R. 15 Mad. 389

See RIGHT OF SUIT — CONTRACTS OR AGREEMENTS.

[I. L. R. 15 Bom. 1

——, Failure to prove—

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[I. L. R. 15 Mad. 50

See VENDOR AND PURCHASER—BREACH OF COVENANT.

[I. L. R. 15 Mad. 50

——, Plea of—

See CIVIL PROCEDURE CODE, s. 232.

[I. L. R. 15 Bom. 307

See LIMITATION ACT, 1877, s. 28.

[I. L. R. 14 Bom. 222

——, Suit to set aside sale on ground of—

See CIVIL PROCEDURE CODE, s. 244—QUESTIONS IN EXECUTION OF DECREE.

[I. L. R. 17 Calc. 769

[I. L. R. 18 Calc. 139

[I. L. R. 19 Calc. 341, 683

(1) ALLEGING OR PLEADING ONE'S OWN FRAUD.

1.—*Civil Procedure Code (Act XIV of* 1882), *s.* 283—*Suit to establish right to attach—Onus of proof—Right of defendant in such suit to set up the title of a third person where defendant's own title derived from such persons is tainted with fraud.*] *F* owned a house in Surat. On the 21st August 1882, he was adjudged a bankrupt by the Supreme Court of the Straits Settlements, within whose jurisdiction he was then carrying on business as a merchant. On the 20th February 1884, he executed a conveyance of the house to *C*, the trustee in bankruptcy, for the benefit of his scheduled creditors, of whom the defendant was one. The defendant held a mortgage on the house for advances made by him to *F*. *C* had an agent in India, one *N*, with whom the defendant was a partner in business. On the 20th November 1884, the plaintiffs obtained a decree for Rs. 78,000 against *F* and another person, and in execution of this decree they attached the house in question as the property of *F*. Prior to the attachment the defendant, in consideration of the mortgage-debt due to him, had obtained a transfer of the house from *C* with possession. No further consideration was paid by him at the time of the transfer. On the attachment being levied by the plaintiffs the defendant claimed the house as purchaser from *C*, and the attachment was raised. The plaintiffs then filed this suit under s. 283 of the Civil Procedure Code (Act XIV of 1882) to establish their right to attach the house as the property of their judgment-debtor. The plaintiffs (the respondents) contended that the transfer of the house by *C* to the defendant was fraudulent, the defendant being a partner of *C's* agent, and no consideration having been paid for the transfer. The defendant (appellant) contended that it was sufficient for him to show that *C's* title was good, and that, if the house had validly passed to *C*, it could not afterwards be attached for *F's* debt. The plaintiffs (respondents) on the other hand argued that the defendant ought not to be allowed to set up *C's* title; that the transfer by *C* to him was fraudulent, and that he ought not to be allowed to benefit by his own fraud:—*Held*, that the defendant was entitled to set up *C's* title as a defence, although he might have been guilty of fraud in his subsequent dealings with *C*. If *C's* title neither originated in, nor was upheld by, any fraud of the defendant, and if the plaintiffs' claim failed on proof of *C's* title alone, the defendant would not benefit by his own fraud, but by the proof of a title paramount to that of both plaintiffs and defendant. In a suit brought under s. 283 of the Civil Procedure Code to establish the right to attach property, it is for the plaintiff to prove that the property in question is the property of the judgment-debtor. The *onus* of proof is upon him. He can have no right to attach property which is proved either never to have belonged to his judgment-debtor, or having been his, to have passed out of his possession and ownership, and become, in law, the property of others prior to the time at which attachment is sought. The defendant in defending such a suit may, therefore, rely on the title of a third person. ADAM ISUFBHAI *v.* JAMNADAS RANCHORDAS.

[I. L. R. 17 Bom. 94

(2) EFFECT OF FRAUD.

2.—*Right of suit—Suit to set aside decree on ground of fraud and collusion.*] Decrees having been passed against the present plaintiff's father and his agent, respectively, property claimed by the present plaintiff was attached. He filed two suits by his next friend to have the attachments set aside, but these suits were dismissed. He now sued to have set aside the decrees dismissing these suits, alleging that his father's agent, defendant No. 2, had colluded with the decree-holder, defendant No. 1, and given false evidence, and that the decrees had been obtained thereby:—*Held*, that the plaint disclosed a good cause of action. KRISHNABHUPATI *v.* RAMAMURTI.

[I. L. R. 16 Mad. 198

FRAUDULENT PREFERENCE.

See INSOLVENCY—ASSIGNMENTS BY DEBTOR.

[I. L. R. 16 Mad. 499

"FRAUDULENTLY," MEANING OF.

See FORGERY.

[I. L. R. 19 Calc. 380

[I. L. R. 15 All. 210

FREIGHT.

See CONTRACT — CONSTRUCTION OF CONTRACTS.

[I. L. R. 16 Bom. 389

FURTHER ENQUIRY.

See CASES UNDER CRIMINAL PROCEDURE CODE, s. 437.

See MAGISTRATE, JURISDICTION OF — POWERS OF MAGISTRATES.

[I. L. R. 18 Calc. 75

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R. 20 Calc. 633

"GAIN."

See COMPANY—FORMATION AND REGISTRATION.

[I. L. R. 17 Calc. 786

GAMBLING.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[I. L. R. 14 Mad. 364

1.—*Bombay Acts IV of* 1887 *and I of* 1890, *s.* 3—*Betting on rainfall*—"*Common gaming house*"—"*Instrument of gaming*"—"*Used*"—*Meaning of these words in s.* 3 *of the Act.*] The accused rented a place near a public road at Bombay, at Rs. 250 a month. There they erected a shed containing eleven *pedhis* or stalls. In the centre of the shed they put up, in a prominent position, a clock for keeping accurate time. The stalls were let out to certain persons, each at the rate of Rs. 100 a month. The roofs of several adjoining houses surrounded this place. From one of these roofs rain fell into the place. Numbers of people resorted to this place for the purpose of rain-betting. The rain betters staked certain sums of money on the chance whether the rain would fall or would not fall within a certain time. After making the bets, the parties betting would go to one of the stall-keepers, and get him to register the particulars of the bet in a book kept for the purpose, and each deposited with the stall-keeper the amount staked. The bets as to rain falling were determined by persons at the place seeing the rain falling in a stream from such of the roofs of the adjoining houses as had been chosen by the betters on making the bets, and seeing also the time, by the clock, if there was any doubt as to the time. After the bet was determined, the winner received from the stall-keeper the amount of the stake. Under these circumstances, the accused were charged before the Chief Presidency Magistrate with committing the offence of keeping a "common gaming house" under s. 4, clauses (*a*), (*b*) and (*c*) of the Bombay Gambling Act IV of 1887, as amended by Act I of 1890. On a reference by the Magistrate under s. 432 of the Code of Criminal Procedure (Act X of 1882):—*Held*, that to bring the place in question within the definition of a "common gaming house" in s. 3 of the Bombay Gambling Act (IV of 1887) as amended by Bombay Act I of 1890, the instrument of gaming or wagering must be in the place itself, either

GAMBLING—*concluded.*

kept there, or brought there and used there, for profit and gain. It is not sufficient that wagers are made in the place upon or by means of some article or other which is outside the place. The roofs of the houses surrounding the place in question could not, therefore, be regarded "as instruments of gaming either kept or used therein," within the meaning of s. 3 of the Act. *Held*, also, that the word "used" in s. 3 of the Act, as amended by Act I of 1890, must be taken in its ordinary sense, as meaning *actually* used. Any article which is *in fact* used as a means of wagering, comes within the definition of "an instrument of gaming," even though it may not have been specially devised or intended for that purpose. *Held, per* TELANG, J., that neither the stalls nor the books in which the bets were registered, nor the money staked and deposited with the stall-keeper, were instruments of gaming or wagering. QUEEN-EMPRESS *v.* KANJI BHIMJI.

[I. L. R. 17 Bom. 184

2.—*Bombay Acts IV of* 1887 *and I of* 1890, *s.* 12—*Coins—Instrument of gaming—Meaning of the expression.*] A coin is not an "instrument of gaming" within the meaning of s. 12 of Bombay Act IV of 1887 as amended by Bombay Act I of 1890. The expression "instrument of gaming," as used in s. 12 of the Act of 1887, means an implement devised or intended for that purpose. *Imperatrix* v. *Vithal*, I. L. R. 6 Bom. 19, followed. QUEEN-EMPRESS *v.* GOVIND.

[I. L. R. 16 Bom. 283

GENERAL AVERAGE, LIABILITY FOR.

See SHIPPING LAW.

[I. L. R. 17 Calc. 362

[L. R. 16 I. A. 240

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868).

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.

[I. L. R. 14 All. 30

——, s. 2, cls. 5, 6.

See TRANSFER OF PROPERTY ACT.

[I. L. R. 13 All. 432

——, s. 3.

See FISHERY, RIGHT OF.

[I. L. R. 20 Calc. 446

——, s. 3, cl. 1.

See LIMITATION ACT, 1877, ART. 177.

[I. L. R. 15 All. 14

——, s. 3, cl. 2.

See LIMITATION ACT, 1877, s. 7.

[I. L. R. 13 Mad. 135

GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868)—*concluded.*

——, s. 6.

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[I. L. R. 13 Mad. 502

—— (I of 1887), s. 3, cl. 13.

See VALUATION OF SUIT—APPEALS.

[I. L. R. 13 All. 320

[I. L. R. 15 All. 363

GIFT.

See HINDU LAW—GIFT.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[I. L. R. 14 Mad. 274

[I. L. R. 15 Bom. 326, 543, 652

[I. L. R. 16 Bom. 492

See MAHOMEDAN LAW—GIFT.

[I. L. R. 13 Mad. 46

[I. L. R. 16 Mad. 43

See MAHOMEDAN LAW — PRE-EMPTION —RIGHT OF PRE-EMPTION—GENERALLY.

[I. L. R. 14 All. 333

See MALABAR LAW—GIFT.

[I. L. R. 16 Mad. 201, 202, 203 note

See ONUS PROBANDI—DEEDS, SUITS TO ENFORCE OR SET ASIDE.

[I. L. R. 18 Calc. 545

See WILL—CONSTRUCTION.

[I. L. R. 13 Mad. 379

——, Deed of.

See DEED—CONSTRUCTION.

[I. L. R. 13 All. 409

—— of beneficial interest.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[I. L. R. 17 Calc. 122

—— of idol and debutter land.

See HINDU LAW — ENDOWMENT—CREATION OF ENDOWMENT.

[I. L. R. 17 Calc. 557

—— of undivided share.

See MAHOMEDAN LAW—GIFT.

[I. L. R. 13 Mad. 46

—— to spiritual adviser.

See ONUS PROBANDI—DEEDS, SUITS TO ENFORCE OR SET ASIDE.

[I. L. R. 12 All. 523

GOMASTA.

See HEREDITARY OFFICE.

[I. L. R. 16 Bom. 374

——, Carrying on business by.

See INSOLVENT ACT, s. 9.

[I. L. R. 20 Calc. 771

GOODS, SUIT FOR PRICE OF.

See CLUB.

[I. L. R. 14 Mad. 362

GOVERNMENT.

See JURISDICTION OF CIVIL COURT—CUSTOMARY PAYMENTS.

[I. L. R. 16 Bom. 649

——, Exciting disaffection towards—

See PENAL CODE, s. 124A.

[I. L. R. 19 Calc. 35

——, Suit against—

See PARTIES — PARTIES TO SUITS — GOVERNMENT.

[I. L. R. 15 Mad. 292

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GOVERNMENT, SUITS AGAINST.

[I. L. R. 17 Calc. 290

GOVERNMENT REVENUE.

——, Assignee of—

See MADRAS REVENUE RECOVERY ACT, s. 2.

[I. L. R. 13 Mad. 319

——, Payment of, to save estate.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[I. L. R. 14 All. 273

GOVERNMENT SOLICITOR.

See COSTS—TAXATION OF COSTS.

[I. L. R. 15 Mad. 405

GRANT. *Col.*

1. Construction of Grants 395
2. Effect of Grant 396
3. Resumption or Revocation of Grant 396

See PENSIONS ACT, s. 4.

[I. L. R. 14 Bom. 573

See RIGHT OF WAY.

[I. L. R. 16 Bom. 552

[I. L. R. 17 Bom. 648

——, Construction of.

See OWNERSHIP, PRESUMPTION OF.

[I. L. R. 15 Mad. 101

See SERVICE TENURE.

[I. L. R. 14 Bom. 82

GRANT—*continued.*

—— by Crown.

See FERRY.

[I. L. R. 18 Calc. 652

——, Endorsement on.

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[I. L. R. 14 Bom. 472

—— of land by Government.

See REGISTRATION ACT, s. 90.

[I. L. R. 19 Calc. 742

——, Validity of.

See HEREDITARY OFFICES ACT, s. 5.

[I. L. R. 14 Bom. 404

(1) CONSTRUCTION OF GRANTS.

1.—*Construction of grant of villages "as jaghir" —Bengal Regulation XXXVIII of* 1793, *s.* 15.] When *jaghir* is granted in indefinite terms, it is taken to be for the life only of the *jaghirdar;* but when it is to the grantee "and his heirs," and there is nothing to control the ordinary meaning of the words, he takes an absolute interest. That *jaghirs* are to be considered life tenures only, unless otherwise expressed in the grant, is laid down in Bengal Regulation XXXVIII of 1793, s. 15. It is the law also in Bombay and other parts of India. DOSIBAI *v.* ISHVARDAS JAGJIVANDAS.

[I. L. R. 15 Bom. 222

[L. R. 18 I. A. 22

2.—*Saranjam—Descent of—Impartibility of—Suit for possession of—Joint management of saranjam—Manager of saranjam—Trustee of profits—Account of management.*] A *saranjam* is ordinarily impartible, and descends entire to the eldest representative of the past holder. In 1885 plaintiff brought this suit to recover possession of certain *saranjam* villages from the defendant. His beneficial right to a third share of the rents and profits of the villages was admitted by the defendant. The point in dispute was the possession and management. The defendant contended (1) that the plaintiff never was entitled to the exclusive possession and management; (2) that he (the defendant) had for years been in actual possession and management, and entitled thereto by virtue of an arrangement between all the sharers in the villages; and (3) that the plaintiff's claim to such possession and management was barred:—*Held*, on the evidence, that the right of management belonged to the plaintiff's branch of the family, and that there was no proof of the arrangement alleged by the defendant. But *held*, also, that the right to such possession and management was an interest in immoveable property within the meaning of Art. 144 of sch. II of the Limitation Act XV of 1877; that the defendant had enjoyed that interest adversely to the plaintiff's rights at all events since January 1866, at which date the plaintiff, who had been in correspondence with

GRANT—*continued.*

(1) CONSTRUCTION OF GRANTS—*concluded.*

Government with reference to his claim against the defendant, was referred by Government to the Civil Courts, and that the plaintiff's claim was, therefore, barred by limitation. *Held*, also, that it was not open to the plaintiff to ask to be placed in possession and management of the villages jointly with the defendant. If the condition of the tenure requires sole management by one person, that condition must be held to pass with the tenure, even though the tenure has passed out of the hands of the lawful holders by adverse possession. The general rule, that persons beneficially entitled to shares in an estate are entitled to partition of it, is excluded from application to properties such as *saranjams*. *Held*, further, that the defendant's possession being admittedly one for management, subject to the rights of the sharers to receive their respective shares in the profits of the villages, was the possession of a trustee of such profits. The plaintiff was, therefore, entitled to have an account taken of the management of the villages by the defendant, and there was no limit to the period over which the accounts should extend other than the limit stated in the plaint. NARAYAN JAGANNATH DIKSHIT *v.* VASUDEO VISHNU DIKSHIT.

[I. L. R. 15 Bom. 247

3.—*Sanad—Construction of sanad—Endowment for charitable purposes.*] A *sanad*, after reciting that certain villages had been held by *C* as *inam* "on account of the worship, jubilees and feeding of Brahmins in honour of the *Shri* (or the Deity)" proceeded to "confirm the *inam* as before," directing that "it be continued to *C* and his sons and grandsons from generation to generation as it had been continued to the *Shri* from former times":—*Held*, that this was a grant to the religious foundation, and not to *C* and his descendants for their own benefit. GANESH DHARNIDHAR MAHARAJDEV *v.* KESHARAV GOVIND KULGAVKAR.

[I. L. R. 15 Bom. 625

(2) EFFECT OF GRANT.

4.—*Grant by landlord—Omission to reserve right of re-entry or reversion.*] *Semble*—That where a landlord grants a permanent and heritable tenure in land he has no estate left in him unless he reserves to himself a right of re-entry or reversion. *Sonet Koer* v. *Himmut Bahadur*, I. L. R. 1 Calc. 391. NIL MADHAB SIKDAR *v.* NARATTAM SIKDAR.

[I. L. R. 17 Calc. 826

(3) RESUMPTION OR REVOCATION OF GRANT.

5.—*Madras Regulation IV of* 1831—*Madras Act IV of* 1862—*Resumption of inam—East India Company's jaghir—Act of State—Menkaval lands —Mirasi rights, evidence of—Secondary evidence of lost grant by Government.*] In a suit to declare the plaintiff's title to a *shrotriem* village which was included in the *jaghir* granted in 1763 by the

GRANT—*concluded.*

(3) RESUMPTION OR REVOCATION OF GRANT—*concluded.*

Nawab of the Carnatic to the East India Company, it appeared that the village in question had been previously granted by the Nawab free of assessment to the *Kazi* of Madras as an endowment for his office, and afterwards to the son of the first grantee personally, without condition of service. In 1779 the British Government confirmed the village in perpetuity to the second grantee on account of the office of *Kazi* which he filled, and to his direct heirs who should be fit for that office. In 1862 on failure of the direct male line, the grantee's grandson by a daughter was nominated to the office of *Kazi* with the approval of Government, who directed he should hold the village, adding that it had been assigned as an endowment for that office. In the same year the *Inam* Commissioner confirmed it as a personal *inam*, enfranchised it and granted a title-deed to the holder. In 1866 Government ordered that the village should be registered as an endowment of the *Kazishíp* and the title-deed cancelled, and in 1868 notified in the *Gazette* that the title-deed which was not produced was cancelled. Between the dates of the above order and notification the *Kazi* transferred the village to the plaintiff under a deed of perpetual lease and placed him in possession. But in 1873 Government resumed the village and subsequently directed that the whole of its net revenue be paid to the *Kazi*. The *Kazi*, from whom the plaintiff claimed, died in 1868. An *inam* of certain *menkaval* lands, which had formerly been allotted to the village watchman as *inam*, had been granted to the *Kazi* in 1802-3; they were cultivated by ryots who paid *varam* to the *inamdar*. The order of resumption in 1873 had no reference to these lands, but in 1877 Government issued *pottahs* to the ryots:—*Held*, (1) that the grant of 1779, the original document not having been produced by the plaintiff, was sufficiently proved by a translation produced from official custody and certified by the Collector in 1838 to be correct and attested by the Persian Translator to Government; (2) that it was competent for the Government in 1779 to alter the nature of the grant of 1761 as an act of State; (3) that on the right construction of Regulation IV of 1831 and Act IV of 1862, and in view of the facts that the plaintiff must have been aware of the nature of the tenure and of the contents of the grant of 1779 and the cancellation of the *inam* title-deed, the Government were not acting *ultra vires* in cancelling the enfranchisement, &c.; (4) that the *Kazi* through whom the plaintiff claimed having died in 1868, there was no reason to question the resumption in 1873; (5) that the plaintiff was entitled to possession of the *menkaval* lands, the action of Government in issuing *pottahs* to the ryots being *ultra vires*. Issues first framed on appeal as to the plaintiff's claim to *mirasi* rights and *menkaval* lands. Evidence of *mirasi* rights considered. KARUŃAKARA MENON *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 14 Mad. 431

GRIEVOUS HURT.

See CASES UNDER HURT.

See REVISION—CRIMINAL CASES—COMMITMENT.

[I. L. R. 16 Bom. 580

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105

[I. L. R. 17 Bom. 260

GROUNDS OF APPEAL.

See APPEAL—GROUNDS OF APPEAL.

[I. L. R. 15 Mad. 503

[L. R. 19 I. A. 179

See CASES UNDER SPECIAL APPEAL—GROUNDS OF APPEAL.

GUARANTEE.

See PRINCIPAL AND SURETY — DISCHARGE OF SURETY.

[I. L. R. 15 Bom. 585

GUARDIAN. *Col.*

1. Appointment 399
2. Duties and Powers of Guardians ... 400

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[I. L. R. 15 Bom. 594

See DISTRICT JUDGE, JURISDICTION OF.

[I L. R. 17 Bom. 566

See HINDU LAW—GUARDIAN.

[I. L. R. 14 Bom. 562

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

[I. L. R. 18 Calc. 111

See HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION.

[I. L. R. 17 Bom. 271

See KIDNAPPING.

[I. L. R. 17 Calc. 298

See LIMITATION ACT, 1877, s 7.

[I. L. R. 16 Bom. 536

[I. L. R. 20 Calc. 714

See LUNATIC.

[I. L. R. 15 All. 29

[I. L. R. 14 Mad. 289

See MAJORITY ACT, s. 3.

[I. L. R. 17 Calc. 944

See CASES UNDER MINOR.

——, Ad litem.

See LUNATIC.

[I. L. R. 16 Bom. 132

GUARDIAN—*continued.*

———, Ad litem—*concluded.*

See CASES UNDER MINOR—REPRESENTATION OF MINOR IN SUITS.

———, Conduct of.

See CUSTODY OF CHILD.

[I. L. R. 16 Bom. 307

———, Omission of, to take objection.

See LAND ACQUISITION ACT, s. 19.

[I. L. R. 17 Bom. 299

———, Power of.

See ISSUES—FRESH OR ADDITIONAL ISSUES.

[I. L. R. 19 Calc. 507

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.

[I. L. R. 15 Mad. 498

———, Removal of.

See APPEAL — ACTS — GUARDIANS AND WARDS ACT.

[I. L. R. 19 Calc. 487

(1) APPOINTMENT.

1.—*Guardians and Wards Act (VIII of* 1890)—*Minor, a member of joint Mitakshara family and having no separate property—Act XL of* 1858.] Under the Guardians and Wards Act, 1890, a guardian cannot be appointed of the property of a minor, who is a member of a joint Hindu family governed by the Mitakshara law, and possessed of no separate estate. Difference between The Guardians and Wards Act, 1890, and Act XL of 1858, stated. *Durgapersad* v. *Keshopersad Singh*, I. L. R. 8 Calc. 656; L. R. 9 I. A. 27, explained. *Narsingrav Ramchandra* v. *Venkaji Krishna*, I. L. R. 8 Bom. 395; and *Appovier* v. *Rama Subba Aiyan*, 11 Moo. I. A. 75, referred to. SHAM KUAR *v.* MOHANUNDA SAHOY.

[I. L. R. 19 Calc. 301

2.—*Inherent power of High Court to appoint guardian—Guardians and Wards Act (VIII of* 1890)—*Appointment of Hindu father as guardian.*] The High Court has the power, irrespective of the provisions of the Guardians and Wards Act (VIII of 1890), of appointing a guardian for an infant or his estate. A Hindu father appointed guardian of his infant sons for the purpose of raising money by the mortgage of ancestral immoveable property, on its appearing to the Court that by so appointing him guardian better terms were likely to be procured from the mortgagee, and the infants to that extent consequently benefited. IN THE MATTER OF THE PETITION OF JAIRAM LUXMON.

[I. L. R. 16 Bom. 634

3.—*Certificate of guardianship—Act XL of* 1858, *s.* 7—*Minor.*] The grant of a certificate under s. 7 of the Bengal Minors Act (XL of 1858) should not be based exclusively on considerations of propinquity of relationship without regard to the other circumstances of the case affecting the interests the minor and the fitness of the person appointed. SOHNA *v.* KHALAK SINGH.

[I. L. R. 13 All. 78

GUARDIAN—*continued.*

(1) APPOINTMENT—*concluded.*

4.—*Appointment of guardian by will—Application for certificate of guardianship—Guardian and Wards Act (VIII of* 1890), *ss.* 7 (*cl.* 3), 13 *and* 48—*Procedure.*] When a person alleges that he has been appointed guardian of a minor under a will, no one else can be appointed guardian under s. 7 (3) of Act VIII of 1890 until it is found, after due investigation, that there is no valid will. The procedure under Act VIII of 1890 is not intended to be summary. SHAHU *v.* HAPIJA BEGAM.

[I. L. R. 17 Bom. 560

5.—*Minor residing out of the jurisdiction of the Court—Letters Patent, High Court, cl.* 17—*Guardians and Wards Act (VIII of* 1890), *ss.* 4, 7, 9—*Testamentary guardians.*] Case in which the Court refused, on a summary proceeding under cl. 17 of the Charter, to appoint a guardian of the person and property of an infant who was not a European British subject, and who was living outside the limits of the Ordinary Original Civil Jurisdiction of the Court, there being testamentary guardians in existence, and no application or suit filed to remove them. On these two last grounds the Court also refused to appoint a guardian of the infant's property under Act VIII of 1890. IN THE MATTER OF SRISH CHUNDER SINGH.

[I. L. R. 21 Calc. 206

6.—*Guardian ad litem—Change of guardian on application of ward—Guardians and Wards Act (VIII of* 1890), *s.* 10.] Where a guardian *ad litem* has once been appointed, his appointment enures for the whole of the *lis* in the course of which it has been made, unless and until it is revoked by the Court; but if the person to whom such guardian is appointed prays for his removal and for the substitution of a guardian named by the applicant, the Court will appoint the guardian so named in absence of any special and valid objection to such person. JWALA DEI *v.* PIRBHU.

[I. L. R. 14 All. 35

(2) DUTIES AND POWERS OF GUARDIANS.

7.—*Guardian, powers of, to deal with minor's estate—Court of Wards—Collector—Waiver—Application of the Land Acquisition Act,* 1870, *to the land of a minor—Insufficiency of compliance with the other requirements of the Act, without actual compensation to the minor's estate—Recovery of land by minor on coming of age.*] The guardian of a minor's estate has no power to waive a right to compensation for part of the estate taken under the Land Acquisition Act, 1870; although the owner, had he been of full age, might have waived it. Although the Court of Wards had no power to alienate the land of a minor of whose estate it had charge, yet possession might have been lawfully taken of the land

GUARDIAN—*concluded.*

(2) DUTIES AND POWERS OF GUARDIANS —*concluded.*

for a public purpose under, and in conformity with, the Land Acquisition Act, 1870, if there had been due compliance with the provisions of the Act, as regards compensation to the minor's estate. Where, however, compensation had not been given, and a merely nominal consideration had passed, the Collector not having acted, as the representative of the Court of Wards, so as to protect the interests of the minor:—*Held*, that no valid title to the land was established as against the ward, and that on his attaining full age he could recover it with mesne profits. LUCHMESWAR SINGH *v.* CHAIRMAN OF THE DARBHANGA MUNICIPALITY.

[I. L. R. 18 Calc. 99

[L. R. 17 I. A. 90

8.—*Power to refer to arbitration—Natural guardian—Reference by arbitration on behalf of minor — Award, application to file—Practice—Reference to Registrar.*] Case in which it appeared on application to file an award that a natural guardian had on behalf of her minor sons submitted certain matters to arbitration, and in which the Court was of opinion that the cases showed that a natural guardian had power to submit to arbitration on behalf of a minor, and referred the case to the Registrar to enquire and report whether the submission and the award thereon were for the benefit of the minors. ROMON KISSEN SETT *v.* HURROLOLL SETT.

[I. L. R. 19 Calc. 334

GUARDIANS AND WARDS ACT (VIII OF 1890).

See BOMBAY CIVIL COURTS ACT, s. 16.

[I. L. R. 16 Bom. 277

See CUSTODY OF CHILD.

[I. L. R. 16 Bom. 307

See CASES UNDER GUARDIAN.

——, s. 41.

See DISTRICT JUDGE, JURISDICTION OF.

[I. L. R. 17 Bom. 566

——, s. 47.

See APPEAL—ACTS—GUARDIANS AND WARDS ACT.

[I. L. R. 19 Calc. 487

——, s. 48.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 16 Mad. 380

——, s. 51.

See DISTRICT JUDGE, JURISDICTION OF.

[I. L. R. 17 Bom. 566

——, s. 51.—The word "Guardian" in s. 51 of the Guardians and Wards Act means a guardian who was such at the time the Act came into force. VALLABDAS HIRACHAND *v.* KRISHNABAI.

[I. L. R. 17 Bom. 566

GUARDIANSHIP, CERTIFICATE OF.

See EVIDENCE ACT, s. 35.

[I. L. R. 17 Calc. 849

See MINOR—CUSTODY OF MINOR.

[I. L. R. 12 All. 213

GUJARAT TALUQDARS ACT (BOMBAY ACT VI OF 1888).

See VALUATION OF SUIT—APPEALS.

[I. L. R. 16 Bom. 408

——, s. 10.—*Application to the Talukdari Settlement Officer to effect partition under a decree—Decree upon which no relief could have been obtained in a Civil Court.*] In 1863 the appellant obtained a decree for partition, which declared his right to a one-sixth share in a certain village. The decree was never executed. In the year 1888 he presented an application to the Talukdari Settlement Officer under s. 10 of Bombay Act (VI of 1888) for partition under the decree:—*Held*, that as the execution of the decree was barred when the Act was passed, and as no fresh suit could have been brought against the defendant upon the right declared by the decree, the application should be rejected. JAMSANG DEVABHAI *v.* GOVABHAI KIKABHAI.

[I. L. R. 16 Bom. 408

——, s. 31.

See EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION.

[I. L. R. 17 Bom. 289

See STATUTES, CONSTRUCTION OF.

[I. L. R. 17 Bom. 289

HABEAS CORPUS.

See CUSTODY OF CHILD.

[I. L. R. 16 Bom. 307

HAT.

See SETTLEMENT — CONSTRUCTION OF SETTLEMENT.

[I. L. R. 17 Calc. 458

HEARSAY EVIDENCE.

See EVIDENCE ACT, s. 32.

[I. L. R. 20 Calc. 758

HEREDITARY OFFICE.

—*Hereditary gomasta appointed to collect deshmukhi allowances—Derivation of his title such that the deshmukh could not dismiss him—Sanad, construction of.*] As to whether a *deshmukh* could dismiss the holder of the paid office of hereditary *gomasta*, appointed to collect, in the *vatan* of the

HEREDITARY OFFICE—*concluded.*

former, the *deshmukhi* allowances from the villages, it was shown by documentary evidence that the *gomasta's* ancestor had been appointed by the ruling power of the day, from which authority also the *deshmukhi* had been derived. It was also shown that the hereditary *gomasta's* title was independent of the *deshmukh*, and that the latter could not displace him. No change had been made under the British rule from what had prevailed as to this under the Peishwa; but such evidence as there was, accorded with the above:—*Held*, that the right of the *gomasta* to act as such, and to receive the payments, had either been granted, or else had been so recognized and confirmed by an authority binding on the *deshmukh*, that he could not deprive the *gomasta* of his office which the Government had conferred upon him; and that the *deshmukh* had not the right, as against him, to collect the allowance himself, directly, either from the village officers, or from the treasury. RAMCHANDRA NARSINGRAV *v.* TRIMBAK NARAYAN EKBOTE.

[I. L. R. 16 Bom. 374
[L. R. 19 I. A. 39

HEREDITARY OFFICES ACT (BOMBAY ACT III OF 1874).

See SERVICE TENURE.

[I. L. R. 15 Bom. 13

———, s. 5.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 14 Bom. 404

———, s. 5.—*Vatandars—Alienation to person not vatandar—Validity of grant*] *Quære*—Whether s. 5 of the Vatandars Act III of 1874 makes an alienation to a person outside the *vatandar* family void as between the grantor and grantee. NARAYAN KHANDU KULKARNI *v.* KALGAUNDA BIRDAR PATEL.

[I. L. R. 14 Bom. 404

———, s. 10.—*Certificate issued by Collector more than twelve years after death of last holder—Court bound to act on certificate—Limitation.*] In execution of a decree against *N* his lands were sold in February 1876, and *H* purchased them and took possession on 10th August 1876. *N* died in July 1877, and in February 1888, his son and heir alleging that the lands were *vatan* applied to the Collector for a certificate under s. 10 of the Vatandars Act (Bombay Act III of 1874). The Collector referred the matter to his subordinates for inquiry, and the certificate was not issued until the 13th March 1890,—that is, more than twelve years after the death of the last holder *N*:—*Held* that, although more than twelve years had elapsed, the Court could not refuse to act on the certificate of the Collector, as provided by s. 10 of the Vatandars Act. CHANDRA NAIK *v.* BAHINABAI.

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[I. L. R. 21 Calc. 206

(1) HIGH COURT, BOMBAY—CIVIL.

1.—*Parsi Marriage Act (XV of 1865), ss. 3, 41, 53, 26, 30—British India—Suit by the husband for divorce—Valid marriage out of British India—Marriage when husband is a minor—Previous consent of guardian.*] The plaintiff and defendant were Parsis. The husband filed this suit in April 1891, stating that in March 1885 he and the defendant went through the ceremony of *ashirvad* at Akola in the Berar Assigned Districts. He alleged that he was at the time only nineteen years of age, and that his mother and guardian had not given her previous consent to the ceremony, nor was she present at it. He and the defendant, subsequently, cohabited at Bhusaval until the 8th April 1885, but since then he had not lived with the defendant. He further alleged that the defendant had been guilty of adultery, and he prayed that, if necessary, it might be declared that the *ashirvad* ceremony did not constitute a valid marriage, but that if the marriage should be declared valid, it might be dissolved. At the hearing, it was found that the requirements of s. 3 of the Parsi Marriage and Divorce Act (XV of 1865) were complied with at the marriage. So that the marriage would have been valid, if it had been celebrated within British India. It was also found that the defendant had been guilty of adultery:—*Held*, that the jurisdiction of the Court was not barred merely by the circumstance that the parties were married at Akola. Section 30 of the Act, 1865, applies to marriages wherever celebrated. In the present case, both the parties were domiciled within the territorial jurisdiction at the time of the marriage, and were still so domiciled, and the adultery was also committed within the jurisdiction. The Court therefore had jurisdiction. The delegates having found that at the marriage the requirements of

HIGH COURT, JURISDICTION OF—*concluded.*

(1) HIGH COURT, BOMBAY—CIVIL—*concld.*

s. 3 of the Parsi Marriage Act (XV of 1865) were complied with, *Held*, assuming that there was no special law or usage in the Berars on the subject as to the requisites of a valid marriage between Parsis in that district, or that, if there was such law or usage, it was in accordance with s. 3 of the Act, the marriage between the plaintiff and the defendant was valid and capable of being dissolved. DORABJI RUSTOMJI MADON *v.* JEBBAI.

[I. L. R. 16 Bom 136

(2) HIGH COURT, CALCUTTA—CIVIL.

2.—*Enforcement of public duties—License for a provision market.*] The High Court has no power to compel Municipalities beyond the local limits of its ordinary original civil jurisdiction to do their duty or to restrain them from doing that which it is not in their province to do. MORAN *v.* CHAIRMAN OF MOTIHARI MUNICIPALITY.

[I. L. R. 17 Calc. 329

(3) HIGH COURT, MADRAS—CRIMINAL.

3.—*Criminal Procedure Code, s.* 2—*Letters Patent, s.* 28—*Scheduled Districts Act* (*XIV of* 1874), *notifications under—Agency tracts, jurisdiction of High Court over—Agency rules—Act XXIV of* 1839, *s.* 3.] The High Court set aside a conviction by the Agent to the Governor in Vizagapatam on a charge of culpable homicide not amounting to murder, and directed that the accused be tried in the Sessions Court at Vizagapatam on a charge of murder. The accused was tried accordingly, and was convicted of murder, and he appealed to the High Court. The Agency tract of Vizagapatam is a scheduled district under Act XIV of 1874, and the Governor in Council extended the operation of the Criminal Procedure Code of 1861 to it by a notification made under that Act in 1862. In 1863 the Governor in Council, by a notification under Act XXIV of 1839, constituted the Agent a Sessions Judge under the Criminal Procedure Code:—*Held*, that the High Court had jurisdiction to direct that the accused be tried by the Sessions Judge under the provisions both of the Letters Patent and of the Criminal Procedure Code. QUEEN-EMPRESS *v.* BUDARA JANNI.

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HINDU LAW.

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[I. L. R. 19 Calc. 452

(1) REQUISITES FOR ADOPTION.

(*a*) AUTHORITY.

1.—*Necessity of express authority of deceased husband—Maxim, "quod fieri non debuit, factum valet"—Law in Benares—Mitakshara law.*] *Held*, by the Full Bench that, according to the Benares school of Hindu law, a Hindu widow cannot make a valid adoption to her deceased husband without his express authority; that an adoption actually made by her without such express authority is illegal and void; and that the maxim, *"quod fieri non debuit, factum valet"* is inapplicable to such an adoption. TULSHI RAM *v.* BEHARI LAL.

[I. L. R. 12 All. 328

(*b*) CEREMONIES.

2.—*Ceremony of datta homam—Adoption by widow during pollution.*] *Dicta* in *Shosinath Ghose* v. *Krishna Sunderi Dasi*, I. L. R. 6 Calc. 381; L. R. 7 I. A. 250, as to incidents of a formal adoption discussed. Observations on the necessity of *datta homam* in a ceremonial adoption among members of a twice-born class, and on an adopiton taking place during the pollution of the adoptive parent. RANGANAYAKAMMA *v.* ALWAR SETTI.

[I. L. R. 13 Mad. 214

(2) WHO MAY OR MAY NOT ADOPT.

3.—*Widow of Oswal Jain sect—Adoption without authority of husband.*] A widow of the Oswal Jain sect can adopt a son without the express or implied authority of the husband. *Govind Nath Roy* v. *Gulal Chand*, 5 Sel. Rep. 276; *Bhagvandas Tejmal* v. *Rajmal*, 10 Bom 241, and *Sheo Sing Rai* v. *Dakho*, 6 N.-W. P. 382; on appeal, I. L. R. 1 All 688; L. R. 5 I. A. 87, referred to. MANIK CHAND GOLECHA *v.* JAGAT SETTANI PRAN KUMARI BIBI.

[I. L. R. 17 Calc. 518

4.—*Minor widow.*] A widow, although a minor, is competent to adopt a son. MONDAKINI DASI *v.* ADINATH DEY.

[I. L. R. 18 Calc. 69

HINDU LAW—ADOPTION—*continued.*

(2) WHO MAY OR MAY NOT ADOPT—*contd.*

5.—*Widow whose husband's corpse has not been removed—Adoption during pollution of adoptive parent—Contract Act (IX of 1872), ss. 15, 16—Coercion—Undue influence.*] The minor widow of a deceased Hindu of the Komati or Vaisya caste (who had authorized her to adopt a son) corporeally accepted a boy as in adoption from his natural father who (*semble*) belonged to a different *gotra* from her deceased husband. There were no formal declarations of giving and taking the child, and *datta homam* was not performed. At the time when the child was handed over to the widow her husband's corpse was still in the house, and the relatives of the child and other members of the caste obstructed the removal of the corpse until the child had been accepted as above and the widow had executed a deed of adoption:—*Held*, that there was no valid adoption by the widow. *Per cur.*—Obstructing the removal of a corpse by the deceased's widow or her guardian unless she made an adoption and signed a document, is an unlawful act and amounts to "coercion" and "undue influence," such as are defined by s. 15 or 16 of the Contract Act. *Dicta* in *Shosinath Ghose* v. *Krishna Sunderi Dasi*, I. L. R. 6 Calc. 381; L. R. 7 I. A. 250, as to incidents of a formal adoption discussed. Observations on the necessity of *datta homam* in a ceremonial adoption among members of a twice-born class, and on an adoption taking place during the pollution of the adoptive parent. RANGANAYAKAMMA *v* ALWAR SETTI.

[I. L. R. 13 Mad. 214

6.—*Adoption by widow with consent of father-in-law—Adoption in a united family—Consent of the head of the family.*] The widow of a deceased co-parcener in a joint Hindu family can adopt with the sole assent of her father-in-law if he is the head of the family and natural guardian of the widow, whatever may be her motives, or the effect of the adoption on the undivided kinsmen. *B* and his two sons, *N* and *V*, were members of a joint Hindu family. In 1883 *B* and *N* commenced to live separately from *V*, but the family estate was not divided. In 1886 *N* died, leaving a widow without male issue. In 1887 *N's* widow adopted the plaintiff with the consent of her father-in-law *B*, with whom she was living. *B* died shortly after the adoption. Thereupon the plaintiff, as adopted son, sued *V*, to recover a moiety of the family estate. The defence to this suit was that the plaintiff's adoption was invalid, on the ground that the adoption had not been made with the assent of all the co-parceners:—*Held*, that the adoption was valid. As *B*, who was the head of the family and natural guardian of the adoptive mother, had given his assent to the adoption, the consent of the other co-parceners was not necessary. VITHOBA *v.* BAPU.

[I. L. R. 15 Bom. 110

7.—*Adoption by widow without consent of husband—Jains of Southern India—Evidence of adoption—Proof of custom—Will of a Jain widow.*] In a suit to declare plaintiff's right as the adopted

HINDU LAW—ADOPTION *continued.*

(2) WHO MAY OR MAY NOT ADOPT—*contd.*

son of a Jain (deceased) and as a beneficiary under the will of the adoptive mother, it appeared that the plaintiff had been taken in adoption by the widow without authority from her husband or consent of his kinsmen:—*Held*, that it lay on the plaintiff to prove by evidence that the adoption was valid, and that he was entitled to take under the will according to the custom governing the family, and *held, on the evidence*, that the plaintiff had failed to prove this. *Per* BEST, J.—If a Jain widow succeeds to her husband's property absolutely and has the right to dispose of it as she likes, the adoption of a son to herself who may succeed to such property would be valid. Observations of HOLLOWAY, J., in *Ritheurn Lallah* v. *Soojun Mull Lallah*, 9 Mad. Jur. 21, distinguished, on the ground that there was no reason for supposing that the parties to the present suit were other than natives of Southern India whose ancestors had been converted to Jainism. PERIA AMMANI *v.* KRISHNASAMI. ADINADHA *v.* KRISHNASAMI.

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8.—*Adoption by a widow whose husband died while a minor—Implied authority from minor husband—Adoption from corrupt and improper motives—Onus of proof—Adoption in Gujarat—Kadva Kunbi caste, adoption among—Custom as to adoption.*] In the Maratha country a Hindu widow may, without the permission of her husband, and without the consent of her kindred, adopt a son to him if the act is done by her in the proper and *bonâ fide* performance of a religious duty, and neither capriciously nor from a corrupt motive. But the adoption must not have been expressly forbidden by the husband, and must not have the effect of divesting an estate already vested in a third person. There is no reason for drawing any distinction, as regards the general law, between Gujarat and the Maratha country properly so called. Apart from local or caste custom, the general law in Gujarat must be taken to be as stated in *Rakhmabai* v. *Radhabai*, 5 Bom. A. C. 191. A widow has implied authority from her husband to adopt, even though her husband be a minor. Where a widow adopts there is a presumption that she has performed the duty from proper motives, and the *onus* lies heavily on him who seeks to set aside the adoption on the ground of corrupt motive. A Hindu widow in Gujarat having adopted a son to her husband, who died before the completion of his sixteenth year, and who was separated from his brother:—*Held*, that the adoption was valid. The authority of the husband to adopt may be implied, although he was a minor at the time of his death. If adoption by a widow be a meritorious act "beneficial to her husband's soul," assent should be implied in the case of a minor husband, as well as in the case of one who had attained his majority. A Hindu widow having adopted a son about eight years after her husband's death, during her last illness when she was confined to her bed, *held*, that that circumstance alone did not afford any sufficient reason for supposing that she was not

HINDU LAW—ADOPTION—*continued.*

(2) WHO MAY OR MAY NOT ADOPT—*concld.*

actuated by the sense of the duty she owed to her husband. The fact that the adoption was made on an inauspicious day, showed the anxiety of the widow to adopt, but not the motive. PATEL VANDRAVAN JEKISAN *v.* PATEL MANILAL CHUNILAL.

[I. L. R. 15 Bom. 565

9.—*Competency of step-mother to give in adoption—Adoption of an adult.*] In a suit to set aside an adoption, it appeared that the person said to have been adopted was an unmarried man of forty years of age, who had already succeeded to his father's estate for twenty years at the time of the alleged adoption, and that he had been given in adoption by his step-mother without the previous consent of her husband, deceased:—*Held*, that the adoption was invalid on the ground that under the Hindu law a step-mother cannot give her step-son in adoption. *Semble*—The adoption was not invalid by reason of the age of the alleged adopted son, or of his having previously taken his partrimony in his natural family. PAPAMMA *v.* VENKATADRI APPA RAU; NARASIMHA APPA RAU *v.* VENKATADRI APPA RAU.

[I. L. R. 16 Mad. 384

10.—*Adoption by a mother who has succeeded as heir to her son after the death of his widow.*] An adoption to herself and her deceased husband by a mother who has succeeded as heir to her son after his death and that of his widow is invalid according to Hindu law. KRISHNARAV TRIMBAK HASABNIS *v.* SHANKARRAV VINAYAK HASABNIS.

[I. L. R. 17 Bom. 164

(3) WHO MAY OR MAY NOT BE ADOPTED.

11.—*Adoption among Brahmans—Ceremony of adoption after marriage of person to be adopted—Estoppel.*] An adoption to be valid must take place before the marriage of the person adopted. In a suit for partition of family property, the plaintiff sued as the adopted son of defendant, who had, after performing the usual ceremony of adoption, long treated him as his adopted son. The defendant denied that the plaintiff was his adopted son on the ground (which was established by the evidence) that the plaintiff was married at the date of the ceremony of adoption. The parties were Brahmans and members of the same *gotra* by birth:—*Held* (1) the adoption set up was invalid; (2) that the defendant was not estopped by his conduct from denying the validity of the adoption. PICHUVAYYAN *v.* SUBBAYYAN.

[I. L. R. 13 Mad. 128

12.—*Niyoga, custom of—Adoption of paternal uncle's son.*] A member of an undivided Hindu family, consisting of himself, his adopted son and his uncle, sold certain land belonging to the family to the plaintiff. In a suit by the plaintiff for a declaration of his title to, and for possession of, the land, it appeared that the adopted son was the son of the paternal uncle of the adoptive

HINDU LAW—ADOPTION—*continued.*

(3) WHO MAY OR MAY NOT BE ADOPTED —*concluded.*

father:—*Held*, that the adoption was not invalid by reason of the abovementioned circumstance. VIRAYYA *v.* HANUMANTA.

[I. L. R. 14 Mad. 459

13.—*Only son—Invalidity of such adoption*] The adoption of an only son is, by the general Hindu law, invalid. WAMAN RAGHUPATI BOVA *v.* KRISHNAJI KASHIRAJ BOVA.

[I. L. R. 14 Bom. 249

14.—*Only son—Maxim, "quod fieri non debuit factum valet."*] According to the Benares School of Hindu law, the giving in adoption of an only son is sinful, and to that extent contrary to the Hindu law; but the adoption of such a son, having taken place in fact, is not null and void; and the maxim, *"quod fieri non debuit factum valet"* is applicable and should be applied to such an adoption. So, *held* by the Full Bench. *Hanuman Tiwari* v. *Chirai*, I. L. R. 2 All. 164, approved and followed. BENI PRASAD *v.* HARDAI BIBI.

[I. L. R. 14 All. 67

15.—*Sister's son—Brahman.*] The child whom the testator had purported to adopt was his sister's son. If it had been necessary to determine the point, their Lordships would probably have had little difficulty in accepting the opinion of the High Court that a Brahman cannot lawfully adopt his sister's son. SUNDAR *v.* PARBATI.

[I. L. R. 12 All. 51
[L. R. 16 I. A. 186

16.—*Sister's son—Bohra Brahmans—Custom.*] Amongst the Bohra Brahmans of the northern districts of the North-Western Provinces there exists a valid and legal custom in virtue of which a person of that caste can adopt his sister's son. CHAIN SUKH RAM *v.* PARBATI. MANSA RAM *v* SUNDAR.

[I. L R. 14 All. 53

17.—*Boy of unregenerate classes — Baqqâls.*] *Semble*—That *baqqâls* do not belong to the regenerate classes, and therefore the rule of law which forbids a Hindu to adopt a boy whose mother he could not have married, does not apply to them. PHUNDO *v.* JANGI NATH.

[I. L. R. 15 All. 327

(4) SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS.

18.—*Second adoption in lifetime of first adopted son.*] By Hindu law, a second adoption cannot be made during the life of a son previously adopted. *Rungama* v. *Atchama*, 4 Moo I. A. 1, referred to. MOHESH NARAIN MUNSHI *v.* TARUCK NATH MOITRA.

[I. L. R. 20 Calc. 487
[L. R. 20 I. A. 30

HINDU LAW—ADOPTION—*continued.*

(4) SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS—*continued.*

19.—*Adoptions by each of two widows simultaneously made to one father.*] By Hindu law there cannot be simultaneous adoptions by two widows of two sons to one father. SURENDRO KESHUB ROY *v.* DOORGASOONDERY DOSSEE.

[I. L. R. 19 Calc. 513
[L. R. 19 I. A. 108

20.—*Conditional adoption—Validity of adoption—Mitakshara law.*] The will of *B*, a Hindu, appointed one *K* manager of all his property, and gave his widow *S* power to adopt a son, and went on to state that *S* "shall manage all the affairs with the consent of the said manager" (*K*), "and she will not be able to do any wrongful act or alienate and waste property uselessly and without his consent. If she do so, it will be cancelled by the said manager or the adopted son; and she will adopt a son with the good advice and opinion of the manager." *S*, wishing to adopt the plaintiff, sent a registered letter to *K*, who had refused to give *S* any advice or assistance, intimating her intention and asking him to come and see the ceremony performed, but he declined to receive the letter which was returned to *S* by the postal authorities, and the plaintiff was eventually adopted without the consent of *K*:—*Held*, that the consent of *K* was not a condition precedent to the validity of the adoption, and that it was not invalid by reason of its having been made without *K's* advice and consent. SURENDRA NANDAN *alias* GYANENDRA NANDAN DAS *v.* SAILAJA KANT DAS MAHAPATRA.

[I. L. R. 18 Calc. 385

21.—*Adoption made the day after the adoptive father made his will—Adoptive son bound by the will — Inconsistent pleas.*] A Hindu wrote his will devising certain ancestral property to his wife and on the following day he registered it and took the plaintiff in adoption. The testator died shortly afterwards. It was found that the plaintiff's natural father was aware of the dispositions contained in the will and that the testator would not have adopted the plaintiff but for the consent of the natural father to those dispositions. The defendants who claimed under a gift from the wife had denied the adoption in their written statement, and on appeal raised the further plea that the adoption, if any, was conditional on the provisions of the will being acquiesced in:—*Held*, (1) that the defendants were not precluded from succeeding on the latter of these inconsistent pleas; (2) that the plaintiff was not entitled to the ancestral property devised by the will to the testator's wife. *Lakshmi* v. *Subramanya*, I. L. R. 12 Mad. 490, followed. NARAYANASAMI *v.* RAMASAMI.

[I. L. R. 14 Mad. 172

22.—*Conditional adoption—Adoption by widow —Agreement between adoptive mother and natural father.*] A Hindu, who is taken in adoption by a widow, acting under an authority from her

HINDU LAW—ADOPTION—*continued.*

(4) SECOND, SIMULTANEOUS, AND CONDITIONAL ADOPTIONS—*concluded.*

husband, is not bound by an agreement entered into by her with his natural father at the time of the adoption. *Bhaiya Rabidat Singh* v. *Indar Kunwar*, I. L. R. 16 Calc. 556; and *Lakshmi* v. *Subramanya*, I. L. R. 12 Mad. 490, referred to. JAGANNADHA *v.* PAPAMMA. BUCHAMMA *v.* JAGANNADHA. PAPAMMA *v.* JAGANNADHA.

[I. L. R. 16 Mad. 400

(5) EFFECT OF ADOPTION.

23.—*Inheritance of adopted son—Divesting estate—Effect of adoption by one of two widows.*] A son adopted to the last male proprietor, who was the full owner of an estate, is entitled to take the whole of that estate and to divest the interest of any person in that estate, whose title by inheritance is inferior to his, and who could not have inherited if the adoption had taken place before the death of the last full owner; but such adopted son is not entitled to claim as preferential heir the estate of any other person besides his adoptive father, when such estate has vested before his adoption in some heir other than the widow who adopts him. Where a man died leaving two widows and having given either of them the power to adopt a son, and the younger widow, on the refusal of the elder one to adopt, adopted a son:—*Held*, that the estate which was in the elder widow was divested by the adoption, and that the adopted son took all the estate of his adoptive father. MONDAKINI DASI *v.* ADINATH DEY.

[I. L. R. 18 Calc. 69

24.—*Divesting of estate already vested—Mitakshara law.*] *B* and *R* were living as a joint family subject to the Mitakshara law. *B* died on the 28th February 1884, leaving him surviving a widow *S*, to whom he gave power to adopt a son to him, and *R* who succeeded by survivorship to *B's* share in the joint-family property. *S* adopted the plaintiff on the 27th October 1885:—*Held*, that on such adoption, the plaintiff became entitled to the share of his father *B*, notwithstanding that such share had already vested in *R*. *Mondakini Dasi* v *Adinath Dey*, I. L. R. 18 Calc. 69, followed. SURENDRA NANDAN *alias* GYANENDRA NANDAN DAS *v.* SAILAJA KANT DAS MAHAPATRA.

[I. L. R. 18 Calc. 385

25.—*Widow with express authority from her husband to adopt—Adoption by such widow cannot divest estate vested by inheritance devolved from a lineal heir of the husband—Adoption by elder brother's widow after younger brother's death.*] *K* and his two sons, *B* and *N*, were members of an undivided family. *B* died first, leaving a widow: then *K* died. On his death, *N* succeeded to the family property. *N* afterwards died, leaving him surviving his widow, the defendant, *G*, who then got possession of the said property. After *N's* death, however, *B's* widow adopted the plaintiff as son to her husband, and he brought this suit against *G* to recover the property from her. He

HINDU LAW—ADOPTION—*concluded.*

(5) EFFECT OF ADOPTION—*concluded.*

alleged that *B* in his lifetime, with the concurrence of *K*, had given express authority to his wife to adopt a son after his death. The Court of First Instance gave the plaintiff a decree. On appeal, the District Judge rejected his claim. The plaintiff appealed to the High Court:—*Held*, confirming the decree of the lower Court, that the plaintiff was not by virtue of his adoption entitled to oust the defendant *G* from the estate of her husband. At the time of his death, *N* was full owner as last survivor of the joint family. The property then devolved as his, and a subsequent adoption, however well authorized, to *B*, a collateral heir of *N*, could not divest the defendant *G*, who did not claim through *B* at all. If the question had arisen between the plaintiff and *N*, the plaintiff would have been entitled to succeed. *Virada Pratapa Raghunada Deo* v. *Brojo Kishoro Patta Deo*, I. L. R. 1 Mad. at p. 83; L. R. 5 I. A. at p. 193 referred to. Adoption by a widow under her husband's authority has the effect of divesting an estate vested in any member of the undivided family of which the husband was himself a member. But it does not divest the estate of one on whom the inheritance has devolved from a lineal heir of the husband. This rule, however, must be supplemented by the addition that the adoption, though authorized by the husband, cannot divest the estate vested in a collateral relation of the husband in succession to some other person who had himself become owner in the meantime. CHANDRA *v.* GOJARABAI.

[I. L. R. 14 Bom. 463

HINDU LAW—ALIENATION.

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[I. L. R. 14 Mad. 459

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[I. L. R. 19 Calc. 249

(1) RESTRAINT ON ALIENATION.

1.—*Hindu Law—Custom—Impartible zemindari—Right of zemindar to alienate—Suit to set aside alienation of impartible property.*] The holder of an impartible zemindari, governed by the law of primogeniture, having a son, executed a mining lease of part of the zemindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor, his minor son and successor, by the Collector of the district as his

HINDU LAW—ALIENATION—*continued.*

(1) RESTRAINT ON ALIENATION—*concluded.*

next friend, (authorized in that behalf by the Court of Wards), now sued the assignee of the lessee to have the lease set aside:—*Held* by PARKER, J, MUTTUSAMI AYYAR, J., and WILKINSON, J., that the lease was not one which a managing member of an ordinary joint family governed by Mitakshara law could providently enter into. *Per* MUTTUSAMI AYYAR and WILKINSON, JJ. (reversing the judgment of PARKER, J.) that in the absence of evidence of any family custom rendering the zemindari inalienable by the zemindar for the time being for purposes other than those warranted by the Mitakshara law, the lease was not invalid as against the plaintiffs. *Sartaj Kuari* v. *Deoraj Kuari*, I. L. R. 10 All. 272, discussed and followed. BERESFORD *v.* RAMASUBBA.

[I. L. R. 13 Mad. 197

(2) ALIENATION BY FATHER.

2.—*Rights of a son unborn.*] Under Hindu law a son conceived is equal to a son born; accordingly, an alienation by a Hindu to a *bonâ fide* purchaser for value is liable to be set aside by a son, who was in his mother's womb at the time of the alienation, to the extent of his share. SABAPATHI *v.* SOMASUNDARAM.

[I. L. R. 16 Mad. 76

3.—*Power of father over ancestral land—Gift to daughters.*] A Hindu during the infancy of his son, conveyed certain immoveable ancestral property to his wife and married daughters by way of gift. After his death the son sued by his next friend to have these alienations set aside and to recover the property:—*Held*, that the alienations should be set aside altogether. RAYAKKAL *v.* SUBBANNA.

[I. L. R. 16 Mad. 84

4.—*Alienation by father when binding on son—Burden of proof.*] The father of an undivided Hindu family has no power to alienate the son's coparcenary share in land in the absence of any debt. One claiming merely as the father's vendee must therefore give evidence that the alienation was made for some purpose which would bind the son, or that it was made with his consent. CHINNAYYA *v.* PERUMAL.

[I. L. R. 13 Mad. 51

5.—*Liability of ancestral estate for father's debts—Improper and immoral debts of father—Evidence of general immoral character of father—Burden of proof—Pensions Act, certificate of Collector under.*] The power of the father, as representative of the family, to bind the son's interests in the family estate except in special cases, being judicially recognized, the *onus* of establishing the existence of those special circumstances necessarily lies on the sons for the purpose of defeating his creditor's remedies against the ancestral estate. The plaintiff sued to recover the balance of a debt due on a mortgage-bond alleged to have been executed in 1878 by the defendant's father (since deceased) to the plaintiff's father.

HINDU LAW—ALIENATION—*continued.*

(2) ALIENATION BY FATHER—*continued.*

The defendant (*inter alia*) pleaded that the loan was contracted without his knowledge and for immoral purposes, and that his share in the mortgaged property was not answerable for the debt. He also contended, as to a sum of Rs. 109-8-0 claimed by the plaintiff, that this sum was claimed in respect of *saranjam*, and was not recoverable by the plaintiff without a certificate under the Pensions Act. The lower Court found that the defendant's father had been a man of extravagant and vicious habits, but *held* that the defendant had failed to prove that the debt in question had been contracted for immoral purposes. The Judge, therefore, awarded the plaintiff's claim. On appeal by the defendant to the High Court:—*Held*, confirming the decree of the lower Court, that the burden lay on the defendant of proving that the loan to the father secured by the mortgage-bond in the suit was for an illegal or immoral purpose, and that the defendant had not discharged this burden. The mere proof that his father had been a man of extravagant and immoral habits was not enough. *Held*, also, that as no certificate from the Collector had been produced, as required by the Pensions Act, the claim to Rs. 109-8-0 should be disallowed. CHINTAMANRAV MEHENDALE *v.* KASHINATH.

[I. L. R. 14 Bom. 320

6.—*Mortgage effected by and decree passed against father only—Father's debt—Effect of mortgage and decree on son's rights and interests.*] Where a Hindu son comes into Court to assail either a mortgage made by his father, or a decree passed against his father, or a sale held or threatened in execution of such decree—whether it be upon a mortgage security or in respect of a simple money debt—where there is nothing to show any limitation of the extent of interest sold or threatened with sale or charged in a security or dealt with by a decree, it rests upon him, if he seeks to escape from having his interest affected by the sale, to establish that the debt he desires to be exempted from paying was of such a character that he, as the son of a Hindu, would not be under a pious obligation to discharge it, or that his interests in the property were not covered by the mortgage or touched by the decree, or affected by the sale certificate. BENI MADHO *v.* BASDEO PATAK.

[I. L. R. 12 All. 99

PEM SING *v.* PARTAB SING.

[I. L. R. 14 All. 179

7.—*Joint-Hindu family—Money-decree against father alone for his personal debt—Attachment of joint-family property—Suit by sons to set aside attachment.*] Where in execution of a simple money-decree obtained against the father only in a joint Hindu family in respect of a bond debt incurred by him personally, the decree-holders attached the whole of the joint-family property, and before sale in execution took place the sons

HINDU LAW—ALIENATION—*continued.*

(2) ALIENATION BY FATHER—*continued.*

of the judgment-debtor objected to the attachment under s. 278 of the Civil Procedure Code, and, the objection having been disallowed, sued for a declaration that they were entitled to a share in the property and for its release from attachment:—*Held*, that the plaintiffs were entitled to impeach the attachment upon the ground that it affected interests which the decree could not touch, and which, therefore, could not be attached under it, and that they were in a position to ask to have those interests exempted from the threatened sale in execution. RAM DAYAL *v.* DURGA SINGH.

[I. L. R. 12 All. 209

8.—*Mortgage executed by father on the whole joint-family property in respect of his own debts—Liability of sons—Burden of proof.*] The father of a joint and undivided Hindu family executed a mortgage over the whole immoveable property of a joint-family. The mortgagees having obtained a decree on their mortgage, and having put an attachment on the joint-family property, the minor son of the mortgagor sued for a declaration that their interest in the attached property was not liable under the mortgagee's decree, inasmuch as the debts in respect of which the mortgage had been executed had been contracted for immoral purposes, and were not such as they, by the Hindu law, were under a pious obligation to discharge:—*Held*, that the burden of proving that the debts in question were contracted for the purposes alleged lay on the plaintiffs. *Beni Madho* v. *Basdeo Patak*, I. L. R. 12 All. 99, followed; *Lal Sing* v. *Deo Narain Singh*, I. L. R. 8 All. 279; *Basa Mal* v. *Maharaj Singh*, I. L. R. 8 All. 205; *Subramanya* v. *Sadasiva*, I. L. R. 8 Mad. 75; *Hanooman Persaud Panday* v. *Munraj Koonweree*, 6 Moo. I. A. 393; and *Bhagbut Pershad Singh* v. *Girja Koer*, I. L. R. 15 Calc. 717, referred to. BHAWANI BAKHSH *v.* RAM DAI.

[I. L. R. 13 All. 216

9.—*Hypothecation by father of joint ancestral estate—Property described as "haq haquq zemindari apna"—Decree enforcing hypothecation—Attachment of estate—Suit by son for declaration that only father's interest is affected by hypothecation—Burden of proof.*] In a suit by the sons of a Hindu for a declaration that certain joint ancestral property was not liable to sale in execution of a decree upon a hypothecation-bond of such property executed by their father, in which the property was described as "*haq haquq zemindari apna*," and that the bond and decree were limited to the father's own interest:—*Held* by the Full Bench that, if the plaintiffs could not show that the interest which was hypothecated was a limited interest, the Court must take it, as against the plaintiffs, that the family property was hypothecated. *Beni Madho* v. *Basdeb Patak*, I. L. R. 12 All. 99; and *Bhawani Baksh* v. *Ram Dai*, I. L. R. 13 All. 216, approved. PEM SINGH *v.* PARTAB SINGH.

[I. L. R. 14 All. 179

HINDU LAW—ALIENATION—*continued.*

(2) ALIENATION BY FATHER—*continued.*

10.—*Simple money-decree against father how far binding upon son's interests in the joint-family property.*] With reference to the question whether the whole joint-family property, or only the interest of the father therein, is liable under a decree obtained against a Hindu father:—*Held* that where there is nothing to show any limitation of the extent of the interest sold, whether the sale took place in execution of a decree on a mortgage or of a simple money-decree, it may be presumed that the family property and not the mere undivided share of the father was sold. *Pem Singh* v. *Partab Singh*, I. L. R. 14 All. 179, referred to. MUHAMMAD HUSAIN *v.* DIPCHAND.

[I. L. R. 14 All. 190

11.—*Son's liability for his father's debt—Immoral origin of debt—Suit by a decree-holder against the sons of a deceased judgment-debtor whose property had passed to them.*] A decree was passed against a Hindu for money dishonestly retained by him from the plaintiff's family to which he was accountable in respect of it. The judgment-debtor having died, the decree-holder sought to attach in execution property of the family which had passed into the hands of his sons by survivorship. The sons objected that such property was not liable to attachment, and the decree-holder was referred to a regular suit. He now brought a suit against the sons:—*Held*, (1) that the sons were not entitled to go behind the decree except for the purpose of showing that the judgment-debt was immoral or illegal in its origin; (2) that the judgment-debt was not of an illegal or immoral nature so as to exclude the pious obligation of the sons to discharge it. NATASAYYAN *v.* PONNUSAMI.

[I. L. R. 16 Mad. 99

12.—*Liability of sons during their father's lifetime for his antecedent debts — Form of decree—Transfer of Property Act, s. 88.*] *Held* by the Full Bench that the sons in a joint Hindu family were liable to be sued along with their father upon a mortgage-bond, given by the father alone after the sons were born, which purported to mortgage the joint-family property, the consideration having been, with a trifling exception, money advances antecedently made by the mortgagee to him, not as manager of the family or with the authority of the sons or for family purposes, but not for purposes of immorality or for purposes which, if the father was dead, would exonerate the sons from the pious obligation of paying such debts of the father:—*Held* also that the decree in such a suit should be a decree for sale of the mortgaged property under s. 88 of Act No. IV of 1882. BADRI PRASAD *v.* MADAN LAL.

[I. L. R. 15 All. 75

13.—*Mitakshara law—Ancestral property, alienation of—Suit by mortgagee against father and minor son for sale of ancestral property—Antecedent debt—Interest, rate of.*] In the case of a Mitakshara family consisting of a father and

HINDU LAW—ALIENATION—*continued.*

(2) ALIENATION BY FATHER—*concluded.*

minor sons, where the father hypothecates ancestral property, there being no proved necessity, but, on the other hand, no proof of immoral or illegal purposes, and no proof that the lender made any enquiry as to the purpose, the debt itself is an antecedent debt within the rulings of the Privy Council, and the mortgagee is entitled in a suit against father and sons to a decree directing the debt to be raised out of the whole ancestral estate inclusive of the mortgaged property. Debts incurred in transactions the character of which is no more than imprudent or unconscientiously imprudent, or unreasonable, are debts to which a pious duty attaches under the Mitakshara law. *Luchmun Dass* v. *Giridhur Chowdhry*, I. L. R. 5 Calc. 855, explained, and followed; *Gunga Prosad* v. *Ajudhia Pershad Singh*, I. L. R. 8 Calc. 131, followed. *Semble*—That 'antecedent debt' in the meaning of the Full Bench means with regard to the mortgage, 'debt antecedent to the transaction,' and in the case of a proceeding by suit 'debt antecedent to the suit.' *Kalachand Kyal* v. *Shib Chunder Roy*, I. L. R. 19 Calc. 392; and *Dip Narain Rai* v. *Dipan Rai*, I. L. R. 8 All. 185, applied as to the rate of interest. KHALILUL RAHMAN *v.* GOBIND PERSHAD.

[I. L. R. 20 Calc. 328

14.—*Execution of mortgage-decree against the estate of a deceased judgment-debtor, member of a joint family under Mitakshara law—Survivorship.*] On an application for the execution of a mortgage-decree the following order was made:—"In this case the sale was stayed awaiting the disposal of the regular suit. It being not necessary to keep the case pending, it is ordered that, attachment being allowed to stand, the case be struck off for the present." The judgment-debtor, the father of a joint Hindu family subject to the Mitakshara law, having died, a fresh application for execution was subsequently made against his estate. The heirs of the judgment-debtor objected to the application, on the ground that the decree having been passed against their father alone, it could not be executed against the joint family estate, now theirs by operation of Mitakshara law:—*Held* that, inasmuch as there was an attachment subsisting at the time of the application, the estate of the judgment-debtor under attachment at the time of his death was liable after his death, even though it had passed to the surviving members of the joint Mitakshara family. *Suraj Bunsi Koer* v. *Sheo Persad Singh*, I. L. R. 5 Calc. 148; L. R. 6 I. A. 88, relied on. *Karnataka Hanumantha* v. *Andukuri Hanumayya*, I. L. R. 5 Mad. 232, distinguished. BENI PERSHAD *v.* PARBATI KOER.

[I. L. R. 20 Calc. 895

(3) ALIENATION BY WIDOW.

(*a*) INCOME AND ACCUMULATIONS.

15.—*Hindu widow's estate—Her right to dispose of accumulated income not made part of the inheritance — Intention of the widow in regard to it.*] The executor of the will of a Hindu

HINDU LAW—ALIENATION—*continued.*

(3) ALIENATION BY WIDOW—*continued.*

(*a*) INCOME AND ACCUMULATIONS—*concluded.*

testator made over to the widow of the latter an aggregate sum consisting of accumulations of income accrued during eight years from her husband's death, undisposed of by his will. The money was not received by her as a capitalized part of the inheritance, but as income that had been accumulated during her tenure of her widow's estate. The widow did no act showing an intention on her part to make this sum of money, the greater part of which she invested in Government securities, part of the family inheritance for the benefit of the heirs. After the lapse of about twenty years she disposed of it as her own:—*Held*, that the money so invested by the widow belonged to her as income derived from her widow's estate, and was subject to her disposition. SAODAMINI DASI *v.* ADMINISTRATOR-GENERAL OF BENGAL.

[I. L. R. 20 Calc. 433
[L. R. 20 I. A. 12

(*b*) ALIENATION FOR LEGAL NECESSITY.

16.—*Power of Hindu widow to alienate—Qualified title to alienate in contracting debt by manager of estate charging it in the hands of heir—Responsibility of lender—Rate of interest, as regards necessity, distinguishable.*] A suit was brought by a creditor who had advanced money for the payment of Government revenue upon an estate under the management of a Hindu widow. The plaintiff's agent had received rents to a certain amount from part of the estate:—*Held*, that the plaintiff ought to have taken care that this sum was applied in part reduction of the debt to him, and that it must be deducted from the amount chargeable to the estate in the hands of the reversionary heir. *Hunooman Persad Panday* v. *Munraj Koonweree*, 6 Moo. I. A. 393, followed. The widow was borrowing in a case where it was for the plaintiff to see whether there was actually a ground of necessity for the loan. Though the loan was necessary, for her to borrow at the high rate of interest charged, considering the security which she gave, was not necessary. The rate of interest had therefore been rightly reduced to twelve per cent. HURRO NATH RAI CHOWDHRI *v.* RANDHIR SINGH.

[I. L. R. 18 Calc. 311
[L. R. 18 I. A. 1

17.—*Burden of proving necessity where a Hindu widow attempts to alienate property held by her for her widow's estate.*] In order to sustain an alienation of the property held by a Hindu widow for her widow's estate, it must be shown either that there was legal necessity for the alienation, or at least that the grantee was led, on reasonable ground, to believe that there was. It a suit upon a mortgage of such property executed under the authority of a widow borrowing money, the point whether the loan was necessary was expressed in the issues in the form of a question how far the defendants' objections, grounded on the absence of

HINDU LAW—ALIENATION—*concluded.*

(3) ALIENATION BY WIDOW—*concluded.*

(*b*) ALIENATION FOR LEGAL NECESSITY—*concld.*

necessity, were tenable. This was obviously an incorrect mode of trying the suit, because it assumed that it was for the defendants to show absence of necessity, and did not accord with the obligation upon a mortgagee, claiming under a widow, to prove a valid mortgage. It was sufficient to defeat the suit that, upon the whole case, there had been no proof of the lender's having fulfilled the legal obligation to inquire and satisfy himself that the widow, from whom he was taking a charge upon her husband's inheritance, had a proper justification for so charging it *Hanooman Persaud* v. *Munraj Koonweree*, 6 Moo. I. A. 393, referred to. AMARNATH SAH *v.* ACHAN KUAR.

[I. L. R. 14 All. 420

S.C. LALA AMARNATH SAH *v.* ACHAN KUAR.

[L. R. 19 I. A. 196

(*c*) WHAT CONSTITUTES LEGAL NECESSITY.

18.—*Revival of a barred debt by the widow of a deceased Hindu.*] It is competent to the widow of a deceased member of a joint Hindu family, inasmuch as she represents the inheritance for the time being, and in whom it is a pious duty to pay her husband's debts, to bind the reversion by a mortgage executed to secure such debts though they were barred at the time of its execution. KONDAPPA *v.* SUBBA.

[I. L. R. 13 Mad. 189

19.—*Pilgrimage never carried out—Debt barred by limitation.*] The payment by a Hindu widow of her husband's debts, though barred by limitation, is a pious duty for the performance of which a Hindu widow may alienate her property. *Chimnaji Gobind Godbole* v. *Dinkar Dhondev Godbole*, I. L. R. 11 Bom. 320; and *Tarini Prasad Chatterjee* v. *Bhola Nath Mookerjee*, I. L. R. 21 Calc. 190, note, followed. In the case of an alienation by a Hindu widow of her husband's property on the ground of legal necessity, the alienee is sufficiently protected if he satisfies himself by *bonâ fide* inquiries of the existence of such necessity, although he may be in fact mistaken. He has not to see to the application of the money. Where, therefore, a widow borrowed money for a pilgrimage to Gya to perform her husband's *shrad* ceremonies, but the pilgrimage was never made, the debt was held to be recoverable out of the estate. UDAI CHUNDER CHUCKERBUTTY *v.* ASHUTOSH DAS MOZUMDAR.

[I. L. R. 21 Calc. 190

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See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT.

[I. L. R. 16 Mad. 182

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED.

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[I. L. R. 13 Mad. 197

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT.

[I. L. R. 16 Mad. 490

See HINDU LAW—INHERITANCE—SPECIAL LAWS—JAINS.

[I. L. R. 16 Bom. 347

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[I. L. R. 20 Calc. 409

See HINDU LAW—MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGE.

[I. L. R. 17 Bom. 400

(1) ADOPTION.

1.—*Adoption by widow of Oswal Jain sect without authority of husband — Customs regulating personal rights and status of family—Effect of conversion from one sect of Hinduism to another.*] The adoption of the tenets of another sect of Hinduism will not necessarily affect the laws and customs by which the personal rights and status of the family were originally governed: therefore, in the absence of evidence to the contrary, the custom which enables a Jain widow of the Oswal caste to adopt a son without the express or implied authority of her husband will not be affected by the conversion of the family to Vaishnavism. *Padmakumari Debi Chowdhrani* v. *Court of Wards*, I. L. R. 8 Calc. 302; L. R. 8 I. A. 229, distinguished; *Bhoobun Moyee Debia* v. *Ramkishore Acharjee*, 3 W. R. P. C. 15; 10 Moore's I. A. 279; and *Puddo Kumaree Debee* v. *Juggut Kishore Acharjee*, I. L. R. 5 Calc. 615, referred to. MANIK CHAND GOLECHA *v.* JAGAT SETTANI PRAN KUMARI BIBI.

[I. L. R. 17 Calc. 518

2.—*Adoption, caste custom prohibiting—Kadwa Kunbi caste at Ahmedabad — Conscience of the members of the caste—Nature of proof required—Uniform and persistant usage moulding the life of the caste.*] A caste custom prohibiting widows from adopting, is one which, before the Court can give judicial effect to it, ought to be established by very clear proof that the conscience of the members of the caste had come to regard it as forbidden. A caste custom having been set up in the Kadwa Kunbi caste at Ahmedabad prohibiting widows from adopting, a large number of witnesses were examined with respect to the

HINDU LAW—CUSTOM—*continued.*

(1) ADOPTION—*concluded.*

custom. Their evidence showed that it had not been the practice in the caste for widows to adopt; but it also showed that there had been no caste resolution forbidding such adoption. On the other hand, it was established that there had been, as a matter of fact, two previous adoptions by widows which were not actually impugned, and that the adoption in dispute had been attested by a large number of *patels* in the caste:—*Held*, that the evidence, as a whole, led to the conclusion that "a uniform and persistent usage had not moulded the life of the caste." PATEL VANDRAVAN JEKISAN *v.* PATEL MANILAL CHUNILAL.

[I. L. R. 16 Bom. 470

(2) ENDOWMENT.

3.—*Dancing-girls attached to a temple inheritance—Temple endowment—Succession to the office of a dancing-girl connected with such temple—Public policy—Right of suit.*] The existence in India of dancing-girls in connection with Hindu temples is according to the ancient established usage, and the Court would not be justified in refusing to recognize existing endowments in connection with such an institution. Accordingly, where the plaintiff sued, as the adopted daughter of a dancing-girl attached to a temple, to redeem and have her right to manage the *inam* lands assigned as the remuneration for the temple office recognized, but her claim was rejected, on the ground that the adoption could not be recognised by the Civil Court:—*Held*, that the plaintiff's suit should be allowed. The lands in question were not claimed as being the property of the last incumbent, but as a part of the endowment of the temple of which she had been the manager. The alleged adoption only had effect as nominating the plaintiff to be successor in the management, and if it was the custom of the temple that the actual incumbent of the office of dancing-girl in the temple should nominate her successor, the Courts of law could not refuse to recognize it, such custom being recognized in the country. TARA NAIKIN *v.* NANA LAKSHMAN.

[I. L. R. 14 Bom 90

(3) INHERITANCE.

4.—*Custom of bogam or dancing-girl caste in Godavari—Gains of prostitution—Property left by mother.*] A pauper sued his sister for the partition of property valued at a large sum. The parties belonged to the *bogam* caste, residing in the Godavari district. The defendant pleaded that the property had been acquired by her as a prostitute, and denied the plaintiff's claim to it. The plaintiff obtained a decree for Rs. 100, being a moiety of the property found to have been left by their mother:—*Held*, on the evidence as to the local custom of the caste that the decree was right. By the custom of the *bogam* caste in the Godavari district property left by a mother is divisible between sons and daughters. CHANDRAREKA *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 14 Mad. 163

HINDU LAW—CUSTOM—*concluded.*

(4) MARRIAGE.

5.—*Ceremony of pariyam or betrothal—Sudra marriage—Illegitimate son of a Sudra—Inheritance.*] The widows of a *shrotriemdar*, who was a Sudra, brought a suit for a declaration of their title by inheritance to his lands against his illegitimate son, who had been registered as *shrotriemdar* in lieu of his deceased father, and to whom certain of the ryots had attorned. The defendant claimed to be legitimate according to the customary law governing the family, although his parents might not have been married at the time of his birth, by reason of his parents having performed the ceremony of *pariyam* before his birth:—*Held*, that the performance of such ceremony did not make a legal marriage, that the defendant was illegitimate, and that the plaintiffs were accordingly entitled to one-half of the lands in question, and the defendant was entitled to the other half. Observations on the allegation and proof of a custom in derogation of the general Hindu law of inheritance. CHINNAMMAL *v.* VARADARAJULU.

[I. L. R. 15 Mad. 307

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See HINDU LAW — WILL — CONSTRUCTION—ADOPTION.

[I. L. R. 19 Calc. 513

(1) CREATION OF ENDOWMENT.

1.—*Gift of idol and debutter land—Private Endowment—Benefit of idol—Shebaits—Debutter property.*] A gift of an idol and of the lands with which it is endowed (being a private endowment) made with the concurrence of the whole family to another family for the purpose of carrying on the regular worship of the idol, if made for the benefit of the idol, is not invalid, and is one binding on succeeding *shebaits*. KHETTER CHUNDER GHOSE *v.* HARI DAS BUNDOPADHYA.

[I. L. R. 17 Calc. 557

2.—*Invalid endowment—Deeds made without intention that they should be acted upon—Donor not divesting himself of dedicated property.*] Case in which a good title was made, by her transfer of her inheritance, through the daughter and heiress of a deceased member of a joint family of brothers, under the Dayabhaga, although her father had executed deeds dedicating his share of the family property to trustees, for the worship of the family deity; this dedication having been inoperative, because it was neither his, nor his brothers', intention that the deeds should be acted upon, and he had never divested himself of his share. WATSON AND CO. *v.* RAMCHUND DUTT.

[I. L. R. 18 Calc. 10

[L. R. 17 I. A. 110

HINDU LAW—ENDOWMENT—*continued.*

(2) SUCCESSION IN MANAGEMENT.

3.—*Hereditary right to be shebait and to have possession of property dedicated to religious purposes.*] According to Hindu law, when the worship of a Thakur has been founded, the office of a *shebait* is held to be vested in the heir or heirs of the founder, in default of evidence that he has disposed of it otherwise, provided that there has not been some usage, course of dealing, or circumstance, showing a different mode of devolution. *Peet Koonwar* v. *Chutter Dharee Singh*, 13 W. R. 296, referred to. It having been established that a particular worship had been founded by the plaintiff's grandfather, it followed that the plaintiff was by inheritance the *shebait* of that worship, there being no proof of any usage at variance with this presumption, but the custom appearing to be in accordance with it:—*Held*, that the plaintiff, as such representative of the founder, was entitled, in preference to a collaterally-descended member of the founder's family, to claim the *shebaitship*. Also, that the plaintiff was entitled, in that character, to the possession of a portrait which had been by the same founder dedicated to this worship. But that he had no right to a temple in which the portrait was kept, this temple having been given by one of the worshippers ("for the location of the Sri Sri Ishwar Jios") with the condition annexed that the defendant should be *shebait*. The plaintiff, accordingly, could not claim possession of this temple, as it could only have been accepted as a gift upon the donor's terms; and this condition prevailed notwithstanding that the temple had been in part paid for by subscription among the worshippers; there being no evidence that the latter did not know of it, or had paid their money with any reference to the question who was to be *shebait*. GOSSAMI SRI GRIDHARIJI *v.* ROMANLALJI GOSSAMI.

[I. L. R. 17 Calc. 3

[L. R. 16 I. A. 137

4.—*Nomination by a pandaram under a decree—Revocation of such nomination by the pandaram's successor.*] The *pandaram* of a *muth* being empowered under a decree to nominate a person to be the head of a subordinate *muth* subject to the approval of the Subordinate Court, made a nomination and died before the Subordinate Court had come to a determination as to the fitness of his nominee. His successor in office was brought on to the record and revoked his nomination, and made a fresh nomination. The Subordinate Court treated the fresh nomination as a nullity and made an order confirming the first. The *pandaram* appealed against this order:—*Held*, that the nomination first made was revocable for good cause, and that the fitness of the person nominated by the appellant should be investigated by the Subordinate Judge. GNANASAMBANDA *v.* VISVALINGA.

[I. L. R. 13 Mad. 338

HINDU LAW—ENDOWMENT—*continued.*

(2) SUCCESSION IN MANAGEMENT—*contd.*

5.—*Succession to a jheer of a muth—Nomination requiring assumption of the character of a sannyasi—Time fixed by decree for assumption of that character—Enlargement on appeal of that time—Evidence of custom.*] The plaintiff sued for a declaration of his right as *jheer* of a *muth* and for possession of the property of the *muth*. The plaintiff alleged that the immemorial custom with reference to the succession to the office of *jheer* was that the *jheer* for the time being nominated his successor, and that, failing such nomination, the disciples assembled at the place where he died, elected his successor, and that the person so nominated became *jheer* by virtue of such nomination alone. The plaintiff's case was that he was nominated by the late *jheer*, although the nomination was not concurred in by the disciples, and that the late *jheer* had initiated him and directed him to become a *sannyasi* a day or two after his initiation, and that he was accordingly entitled to the rights and privileges of *jheer*. The plaintiff obtained a decree which was, however, made contingent upon his assuming the character of a *sannyasi* within the period of four months. The defendant preferred an appeal against this decree, and the plaintiff preferred an appeal praying for the enlargement of the period fixed, within which he was to become a *sannyasi*, pending the disposal of the appeal preferred by the defendant. On the plaintiff's appeal:—*Held*, the Court had power to extend the time as prayed. On the defendant's appeal:—*Held* (1), on its appearing that the plaintiff did not repeat the *presha mantram*, that his *upadesam* was insufficient; (2) that the plaintiff's right, if any, to the status of *jheer* ceased on his omission to become a *sannyasi* soon after the initiation alleged; (3) on the evidence that no similar case of succession had taken place in the history of the institution, that the plaintiff had established merely an imperfect nomination which could not be upheld on the principles deducible from the known cases of succession. RANGACHARIAR *v.* YEGNA DIKSHATUR.

[I. L. R. 13 Mad. 524

6.—*Succession to management of muth—Want of asceticism of paradesi—Removal of paradesi—Form of decree.*] The plaintiff, the zemindar of Sivagunga, sued in a Subordinate Court to remove the defendant from the office of head of a *muth*. The defendant was a married man living with his wives and children, whom he maintained with the produce of the property of the *muth*, and it appeared that he had failed to perform the ceremonies of the institution. The *muth* in question came into existence under a deed of endowment or "charity grant," whereby the first zemindar of Sivagunga granted land to his *guru* for the erection and maintenance of a *muth* and the performance of certain religious exercises in perpetuity, and provided that the head of the *muth* should be of the line of disciples of the original grantee whose spiritual family he desired to perpetuate. In 1867 a predecessor in

HINDU LAW—ENDOWMENT—*continued.*

(2) SUCCESSION IN MANAGEMENT—*contd.*

title of the plaintiff had sued unsuccessfully to recover certain property of the *muth* from the defendant, alleging another cause of action than his status as a married man and his misappropriation of the *muth* property; and in that suit it was established that the head of the *muth* for the time being had the right to appoint his successor, and that such appointment was not subject to confirmation by the zemíndar. It appeared that the trusts of the *muth* had been violated and the income misapplied, and that there was no qualified disciple in whom the right of succession had vested, and that the members of the plaintiff's family were the only persons interested in the appointment:—*Held*, that the proper decree was (1) to declare the plaintiff's right to appoint a qualified person with the concurrence of the rest of his family; (2) to direct him to do so within a given time, failing which the suit should stand dismissed with costs. If such appointment was made, notice should be given to the other members of the plaintiff's family before it was confirmed: if such appointment were confirmed, the property should be directed to be delivered to the person appointed to be administered in accordance with the trusts and usage of the *muth*. *Semble*—That the *paradesi* or head of the *muth* might be a married man, provided he had been duly initiated. SATHAPPAYYAR *v.* PERIASAMI.

[I. L. R. 14 Mad. 1

7.—*Succession to the office of dharmakarta—Act XX of* 1863, *s.* 14—*Religious endowments—Custom and usage.*] On a question of the right of succession to the office of *dharmakarta* of a *devasthanam* or temple at Rameswaram in Madura (and in such cases the only law applicable is the custom and practice, which are to be proved by evidence), both the Courts below found that, according to the established usage, the succession was provided for by each successive *dharmakarta* initiating a *pandaram*; and, whilst in office, appointing him as his successor. It followed that the appointment of a *dharmakarta* by one who had already ceased to hold the office (having been removed under Act XX of 1863, s. 14) was not in accordance with usage, and was therefore invalid. The person whom the displaced *dharmakarta* had attempted to appoint was head of the *muth* from which preceding *dharmakartas*, as it appeared, had been taken. Besides the above cause of invalidity in the appointment in question, the evidence supported the finding that the displaced *dharmakarta* made his attempt to appoint the head of the *muth* to succeed him in office in furtherance of his own interests, and did not *bonâ fide* exercise his powers, if any. This finding invalidated the whole appointment and applied to the headship of the *muth* as well as to the office of *dharmakarta*. RAMALINGAM PILLAI *v.* VYTHILINGAM PILLAI.

[I. L. R. 16 Mad. 490

[L. R. 20 I. A 150

HINDU LAW—ENDOWMENT—*continued.*

(2) SUCCESSION IN MANAGEMENT—*concld.*

8.—*Succession to Mohant — Succession to "the "gaddi" of a temple—Nature of evidence required to prove title to succeed—Explanation of terms "nihang" and "grihast."*] *Per* EDGE, C. J., and MAHMOOD, J.—The question who is entitled to succeed to the office of a deceased *Mohant* must be decided in each case upon the evidence as to the customs relating to succession observed by the particular sect to which the deceased *Mohant* belonged. It is necessary for the person claiming a right to succeed as *Mohant* to establish that right by satisfactory evidence: he cannot derive any advantage from the weakness of his opponent's title. *Per* MAHMOOD, J.—It was necessary for the plaintiff in this case to prove that he was "*nihang*," as distinguished from "*grihast*," which he failed to do. Meaning of the terms "*nihang*" and "*grihast*" explained. *Genda Puri v. Chhatar Puri*, I. L. R. 9 All. 1; L. R. 13 I. A. 100, referred to. BASDEO *v.* GHARIB DAS.

[I. L. R. 13 All. 258

(3) DISMISSAL OF MANAGER.

9.—*Management of temple—Dismissal of dharmakarta, grounds for—Dharmakarta guilty of misfeasance retained in office on terms.*] A suit to remove a *dharmakarta*, though he is held to have been guilty of misconduct in the discharge of his duties as such, may, in the absence of any proved and deliberate dishonesty on the defendant's part, be dismissed on conditions to be complied with by him. SIVASANKARA *v.* VADAGIRI.

[I. L. R. 13 Mad. 6

10.—*Relation between the founder's representative and the Mohunt—Agreement by the Mohunt on his appointment—Grounds of dismissal.*] In the absence of a deed of endowment the obligations of the head of a *muth* to the representative of the founder can only be deduced from the usage of the institution. In a suit by the representative of the founder to remove the defendant from the headship of a *muth*, it appeared that the usage was for the head of the institution for the time being to nominate his successor, and for the representative of the founder to sanction the nomination and invest the nominee with a *sadi* on his installation, and that the defendant had asked the plaintiff to appoint him and had undertaken on his appointment to furnish to him accounts of the income and expenditure of the *muth*:—*Held*, that the plaintiff was not entitled to remove the defendant from office on the ground of his refusal to furnish accounts. GAJAPATI *v.* BHAGAVAN DOSS.

[I. L. R. 15 Mad. 44

11.—*Property bequeathed to an idol — Act of Foreign State – Deposition of manager from his position by an act of State of foreign power—Effect of deposition on right to property in Bombay—Trustee — Will—Power of appointment.*] Under a power given to her by the will of her husband

HINDU LAW--ENDOWMENT—*continued.*

(3) DISMISSAL OF MANAGER—*continued.*

C had the right to bequeath a certain house situate in Bombay. She died in 1873, and by her will she bequeathed the house in question to trustees, their heirs, &c., in trust to pay and apply the rents thereof to the shrine or *gadi* of Shri Nathji for ever, and she gave the trustees and their heirs, &c., the right to reside for life in the first storey of the said house free of rent. The shrine of Shri Nathji is situate at Nathdwara in the territory of His Highness the Maharana of Oodeypore. It is held in great veneration by the Vaishnava sect of Hindus, and is extremely wealthy. The plaintiff held the position of Maharaja of Nathdwara (Tikait Maharaja) up to the year 1876, and as such sat on the *gadi* and managed the property of the said shrine. In that year, however, he was deposed from his position by the principal authorities of Oodeypore and deported from Nathdwara, and his son, the second defendant, was raised to the *gadi* in his place. Since that time the plaintiff had never been permitted to go back, nor had he had anything to do with the shrine. The second defendant (his son) had since his elevation performed the worship and managed the property belonging to the shrine. The plaintiff, however, claimed in this suit to be still the legal owner and representative of the shrine, and as such entitled to the house in question and to the rents and profits thereof since the death of *C*. The first defendant was one of the trustees named in the will of *C* to whom the house was bequeathed in trust. The plaintiff in his plaint also contended that the clause in *C's* will, giving the said trustees a right to reside in the house free of rent, was *ultra vires* of the power of appointment given to her by the will of her husband. The defendants denied that since his deposition the plaintiff was the legal owner and representative of the shrine of Shri Nathji. They contended that having been deposed and deported from Nathdwara he could no longer apply the rents to the support of the shrine, and that if the house were given to him, the trusts of *C's* will would be defeated. They contended that the second defendant in virtue of his position was entitled to receive the rents, and that this suit should be dismissed:—*Held*, that the plaintiff was entitled to the said house. The house was validly bequeathed to the *gadi*. At the date of the bequest the plaintiff was *de facto* as well as *de jure* in possession of the shrine and of its property. His deposition from the *gadi* was an act of a foreign State, and did not affect his right to property in Bombay. If he was regarded as owner of that property he had not lost his right as such to the said property in consequence of his deposition, and if he was merely a trustee he had not been removed from his office by any competent tribunal. *Held*, also, that under the will of *C* the first defendant was entitled to reside rent-free in the first storey of the house in question during his lifetime. GOSWAMI SHRI GIRDHARJI *v.* MADHOWDAS PREMJI.

[I. L. R. 17 Bom. 600

HINDU LAW—ENDOWMENT—*continued.*

(3) DISMISSAL OF MANAGER—*concluded.*

12.—*Deposition of manager by act of State of foreign power—Effect of such act on title to property outside jurisdiction—Property of idol—Appointment of new manager—Suit by latter for property of shrine.*] For thirty years prior to 1876 the defendant had been the high priest of the shrine of Shri Nathji at Nathdwara in the territory of the Maharaja of Oodeypore, and as such was manager of the property of the shrine. This shrine is held in great veneration by the Vaishnava sect of Hindus, and large bequests and offerings of money, land, &c., are made to it by members of that sect. To facilitate the collection of such offerings, and the employment of the funds belonging to the shrine firms are established in various parts of India, including Bombay. The firm in Bombay was carried on under the name of *N P*, and the house in which it was carried on was built with moneys belonging to the shrine. On the 8th May 1876, by order of the Political Agent of Meywar and the Maharana of Oodeypore, he was deposed from that office for alleged misconduct and deported from Nathdwara. In his place his son, the plaintiff, was placed on the *gadi* as high priest. In 1878 the plaintiff brought this suit praying for a declaration that as high priest of the shrine he was entitled to the property in Bombay belonging thereto, and for delivery of the same to him, and for an injunction against the defendant, and for a receiver, &c. He obtained a rule *nisi* calling on the defendant to show cause why he should not be restrained from receiving or dealing with the moneys of the said firm of *N P* and from tampering with the books, &c.:—*Held*, discharging the rule, that the plaintiff had shown no title to the property in question. The defendant was in possession, and had been for many years in possession, of the property. His deposition by a foreign power and the election of the plaintiff to the *gadi* in the place of the defendant did not transfer the title to property in Bombay from the defendant to the plaintiff. As an act of State it could not be made the basis of an action, and it could not be regarded as a foreign judgment. GOSWAMI SHRI GOVARDHANLALJI GIRDHARLALJI *v.* GOSWAMI SHRI GIRDHARLALJI GOVINDRAIJI.

[I. L. R. 17 Bom. 620 note

(4) TRANSFER OF RIGHT OF WORSHIP.

13.—*Transfer of religious office—Transferee not solely entitled in succession to transferor.*] In a suit against the *mooktessors* or trustees of a temple, the plaintiff sought a declaration of his right to perform the *puja* in the temple, and an injunction restraining the defendants from interfering with the exercise of such right. It appeared that the office of *pujari* was hereditary in the plaintiff's family; that it had been held by the plaintiff's undivided uncle (deceased); that he transferred in it 1880 to the plaintiff's father (deceased), in succession to whom the plaintiff now claimed it. The High Court called for a finding as to whether the plaintiff's father was

HINDU LAW—ENDOWMENT—*continued.*

(4) TRANSFER OF RIGHT OF WORSHIP—*concluded.*

the sole heir next in succession to his transferor, and it was found that he had three brothers:—*Held*, that the transfer of the office to the plaintiff's father was invalid, and the suit should be dismissed. NARAYANA *v.* RANGA.

[I. L. R. 15 Mad. 183

14.—*Transfer of religious office—Right of suit—Suit to set aside sale in execution of decree of lands belonging to temple.*] A hereditary *dharmakarta* of a temple, who had assigned his office to a zemindar and consented to a decree being passed on the footing of such assignment, is competent nevertheless to bring a suit to set aside a Court sale of temple lands, treating such assignment as a nullity. SUBBARAYUDU *v.* KOTAYYA.

[I. L. R. 15 Mad. 389

15.—*Transfer of religious office—Res extra commercium — Custom as to assignability.*] The plaintiff sued for a declaration of his title as purchaser of a *mirasi* office in a temple to which were attached certain duties to be performed as part of a religious ceremony, and for a sum of money representing the emoluments of the office. The first defendant was the plaintiff's vendor, the second defendant claimed title to the office by purchase, the other defendants were the trustees of the temple, and they did not appear on appeal. The Court of First Instance passed a decree as prayed, which was reversed on an appeal preferred by the second defendant alone. On second appeal:—*Held*, that defendant No. 2 was not entitled to a decree on the sole ground that the office was *res extra commercium*. *Per* PARKER, J.—Had the trustees of the temple appeared in the Court of First Appeal and raised the question of the inalienability of the office, it would have been necessary for the Court to have determined the question whether by the custom of the particular institution such alienations were valid. RANGASAMI *v.* RANGA.

[I. L. R. 16 Mad. 146

(5) ALIENATION OF ENDOWED PROPERTY.

16.—*Debt contracted by one claiming to be in possession as head of the institution—"De facto" manager, power of—Cost of defending ejectment suit.*] Suit on a bond in which the obligor was described as the head of a *muth*, and the debt thereby secured was stated to have been incurred "for the reasonable expenses of the suit which was being proceeded with, and for the good of the *muth* and for the said *muth's* own expenses." The debt had been contracted by one who was in possession of the *muth* under a claim that he was the duly-constituted head of the institution for the purposes of defending a suit brought by the head of another religious institution to eject him and to establish certain rights over the *muth*. A decree for ejectment was obtained, but some of the pretentions of the plaintiff were successfully

HINDU LAW—ENDOWMENT—*concluded.*

(5) ALIENATION OF ENDOWED PROPERTY—*concluded.*

resisted. The present defendant was a receiver of the properties of the *muth* appointed by the Court in the course of that litigation:—*Held*, that the bond was not enforceable against the property of the *muth*. SAMINATHA *v.* PURUSHOTTAMA.

[I. L. R. 16 Mad. 67

HINDU LAW—FAMILY DWELLING-HOUSE.

Widow's right of residence in her husband's house after his death—House mortgaged by plaintiff's husband in his life-time and sold in execution—Auction-purchaser with notice of widow's claim to reside, right of.] In execution of a decree upon a mortgage effected by the plaintiff's husband in his life-time, the house in dispute was put up to auction, and purchased by the defendant. The defendant was aware that the plaintiff (the mortgagor's widow) was residing in the house at the time of the Court-sale. In a suit brought by the plaintiff to establish her right to reside in the house in question, *held*, that in the absence of any allegation that the mortgage effected by the plaintiff's husband was not for the benefit of the family, or was in any way in fraud of the plaintiff's rights, the defendant as auction-purchaser took the house free from the plaintiff's right of residence as a Hindu widow, notwithstanding the fact that he had notice of her claim. MANILAL *v.* BAI TARA.

[I. L. R. 17 Bom. 398

HINDU LAW—GIFT.

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(1) REQUISITES FOR GIFT.

1.—*Verbal gift of immoveable property—death of the donor—Possession given to the donee by the son of the donor.*] One *G* being possessed of certain lands, which were his self-acquired property, died in 1878. On his death-bed he told his son, *P* (the plaintiff's father), to give these lands to his (*G's*) daughter, the defendant. In the following year (1879) *P* by a registered deed of gift gave the lands to the defendant. The deed contained the following recital:—"Our *vadil* (father) *G* has made a gift to you of his self-acquired lands, Nos. 101 and 102, of *monza* Vadgaon for your own and your children's maintenance, and has directed me (*P*) to execute an instrument according to law. I (*P*) hereby execute a deed of gift to you." Shortly after the execution of this document, the defendant was put into possession of the lands, and she admittedly continued in possession down to the commencement of this suit in 1888. The plaintiffs, who were the minor children of *P* now sought to recover these lands from the defendant, alleging that on the death of their grandfather, *G*, the lands had devolved by inheritance upon his son, *P* (their father), and contending that the latter had no power to make

HINDU LAW—GIFT—*continued.*

(1) REQUISITES FOR GIFT—*concluded.*

a gift of these to the defendant. The lower Court found that the question of *P's* competency to give the lands did not arise, as they had already been given to the defendant by his father, *G*, and that *P* was simply an instrument in carrying out the wishes of his father, and in executing the deed of gift to the defendant. On appeal, the District Judge considered that the point for determination was whether the gift by *G* to the defendant was valid by Hindu law, not having been accompanied by possession. He held the gift to be valid. On special appeal to the High Court:—*Held*, dismissing the appeal, that whether the gift by *G* to the defendant was to be regarded as a gift, possession being afterwards given to the defendant, or whether *G* was to be regarded as having constituted himself a trustee and having made *P* a trustee to carry out his wishes, the defendant was in lawful possession of the lands, and that the plaintiffs had neither by Hindu law nor otherwise any legal or equitable claim to have the deed of gift to the defendant cancelled. BHASKAR PURSHOTAM *v.* SARASVATIBAI.

[I. L. R. 17 Bom. 486

2.—*Gift without delivery of possession—Transfer of Property Act (IV of 1882), ss. 123, 129—Immoveable property — Acceptance of gift—Registration.*] *P* executed a deed of gift of certain property in favour of the plaintiff in 1877 before the Transfer of Property Act was passed, and the deed was duly registered. In 1881 *P* sold certain portions of the same property to the defendants, and gave possession to them of such portions. *P* died six years after the execution of the deed of gift, and after his death some of the title-deeds of the property covered by the deed of gift came into possession of the plaintiff. Both the lower Courts found that there had been no delivery of possession given by the donor nor acceptance by the donee. In a suit brought five years after the death of *P* for possession of the property the subject of the alleged gift:—*Held*, that mere registration was not sufficient to make the gift complete according to the Hindu Law, under which some possession or acceptance by the donee was necessary: there being neither possession nor acceptance, the suit should be dismissed. *Dagai Dabee* v. *Mothuranath Chattopadhya*, I. L. R. 9 Calc. 854; *Kishto Soondery Debea* v. *Kishtomotee*, Marsh., 367; and *Harjivan Anandram* v. *Naran Haribhai*, 4 Bom. H. C. 31, referred to. *Dharmodas Das* v. *Nistarini Dasi*, I. L. R. 14 Calc. 446, approved. LAKSHIMONI DASI *v.* NITTYANANDA DAY.

[I. L. R. 20 Calc. 464

(2) POWER TO MAKE AND ACCEPT GIFTS.

3.—*Voluntary gift to relative in consideration of natural affection—Alienation by undivided member of joint family.*] A member of an undivided Hindu family, consisting of himself, his adopted son, and his uncle, sold certain land belonging to the family to the plaintiff. In a suit by the plaintiff for a declaration of his title to, and for possession of, the land, it appeared that the sale was not justified by any circumstances of family necessity; and that the adoption (which was disputed) was a valid one. During the pendency of the suit the undivided uncle died, having made a gift of his property to his daughter-in-law not for value but in consideration of natural affection:—*Held*, referring to *Baba* v. *Timma*, I. L. R. 7 Mad. 357 and *Ponnusami* v. *Thatha*, I. L. R. 9 Mad. 273, that the gift by the undivided uncle to his daughter-in-law was invalid and that the plaintiff was entitled to a moiety of the land sold to him. VIRAYYA *v.* HANUMANTA.

HINDU LAW—GIFT—*concluded.*

(2) POWER TO MAKE AND ACCEPT GIFTS—*concluded.*

[I. L. R. 14 Mad. 459

(3) CONSTRUCTION OF GIFTS BY WILL OR DEED.

4.—*Gift of land to a daughter—Presumption as to interest taken by donee.*] In a suit to recover possession of certain land, the plaintiff claimed title under a gift made to his mother, deceased, by her father, whose sons and grandsons, the defendants, had entered into possession on the death of the donee, which took place less than three years before suit. The deed of gift was not produced, and it did not appear that the donee, who had been placed in possession of the land and had retained it for thirty-seven years, was a widow at the time of the gift:—*Held*, that the plaintiffs were entitled to a decree, there being no ground to presume that a life-interest merely was intended to pass under the gift. RAMASAMI *v.* PAPAYYA.

[I. L. R. 16 Mad. 466

5.—*Gift to woman without express words—Power of donee to alienate.*] In the case of gifts, as in the case of wills, the well-established rule must be followed that, in the absence of express words showing such an intention, a gift to a woman does not confer an absolute estate of inheritance which she is enabled to alienate. ANNAJI DATTATRAYA *v.* CHANDRABAI.

[I. L. R. 17 Bom. 503

HINDU LAW—GUARDIAN.

Authority of guardian to borrow money for funeral ceremonies of minor's father—Liability of the estate for such debt.] On the death of his father the minor defendant was taken charge of by one *N*, his father's cousin, who also took possession of the estate of the deceased. To defray the expenses of the funeral ceremonies of the deceased, *N* borrowed money from the plaintiff, who now sued to recover the amount from the estate of the deceased:—*Held*, that *N*, as nearest male relative and guardian, according to Hindu law, of the orphan minor, had authority to bind the estate in the hands of the minor so far as the

HINDU LAW—GUARDIAN—*concluded.*

loan was necessary to secure the proper performance of the funeral ceremonies of the minor's father. NATHURAM *v.* SHOMA CHHAGAN.

[I. L. R. 14 Bom. 562

HINDU LAW—HUSBAND AND WIFE.

Suit for restitution of conjugal rights—Desertion—Cruelty—Insanity of husband—Limitation—Act XV of 1877 (*Limitation Act*), *s.* 23, *sch. ii, Nos.* 34, 35 *and* 120.] The texts of the Hindu law relating to conjugal cohabitation and imposing restrictions upon the liberty of the wife, and placing her under the control of her husband, are not merely moral precepts, but rules of law. The rights and duties which they create may be enforced by either party against the other, and not exclusively by the husband against the wife. The Civil Courts of British India, as occupying the position in respect of judicial functions formerly occupied in the system of Hindu law by the king, have undoubtedly jurisdiction in respect of the enforcement of such rights and duties. The Civil Courts of British India can therefore properly entertain a suit between Hindus for the restitution of conjugal rights, or for the recovery of a wife who has deserted her husband. It is not necessary, as a condition precedent to such suits, the parties being Hindus, that there should be any demand by the plaintiff and refusal by the defendant. The provisions of arts. 34 and 35 of the second schedule of the Limitation Act cannot be taken as applicable to suits of this description. To hold that they did apply would be to introduce serious innovations into the personal law of the Hindus (and of the Mahomedans) which could not have been contemplated by a statute of the nature and scope of the Limitation Act. The limitation applicable to suits of the present nature is that of art. 120 of the second schedule, read with s. 23 of the Limitation Act. Desertion by a wife of her husband is permitted by the Hindu law under certain circumstances, but the insanity of the husband will not justify his desertion by the wife. In any case desertion does not terminate the relation of husband and wife. A suit for restitution of conjugal rights could in such case only be effectually met by establishing a plea of some matrimonial offence on the part of the complainant such as would entitle the defendant to a separation. Legal cruelty on the part of the complainant may be a ground for refusing restitution of conjugal rights, or for imposing terms on the complainant. BINDA *v.* KAUNSILIA.

[I. L. R. 13 All. 126

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[I. L. R. 18 Calc 111

(1) AUTHORITIES ON LAW OF INHERITANCE.

1.—*Comparative authority of the Mitakshara and the Mayukha in the Ratnagiri District.*] The Ratnagiri District forms part of the Maratha country where the doctrines of the *Mitakshara* are paramount, and where the *Mayukha*, notwithstanding the eminent position it has gained, is still a secondary authority. BALKRISHNA BAPUJI APTE *v.* LAKSHMAN DINKAR.

[I. L. R. 14 Bom. 605

JANKIBAI *v.* SUNDRA.

[I. L. R. 14 Bom. 612

(2) SPECIAL LAWS.

(*a*) RAJBANSIS

2.—*Family adopting Hindu religion—Custom.*] In the absence of any custom to the contrary, or of any satisfactory evidence to show what form of Hindu law they have adopted, the members of a family who have adopted the Hindu religion are governed by the school of Hindu law in force in

HINDU LAW—INHERITANCE—*continued.*

(2) SPECIAL LAWS—*concluded.*

(*a*) RAJBANSIS—*concluded.*

the locality where they reside. *Fanindra Deb Raikat* v. *Rajeswr Das*, I. L. R. 11 Calc. 463; L. R. 12 I. A. 72. RAM DAS *v.* CHANDRA DASSIA.

[I. L. R. 20 Calc. 409

(*b*) JAINS.

3.—*Law applicable to Jains in the absence of special custom.*] In the absence of a special custom, the ordinary Hindu law applies to the Jains. RUKHAB *v.* CHUNILAL AMBUSHET.

[I. L. R. 16 Bom. 347

(3) GENERAL HEIRS.

(*a*) SAPINDAS.

4.—*Gotraj-Sapindas—Males excluding females.*] The females in each line of *gotrajas* are excluded by any males existing in that line within the limits to which the *gotraj* relationship extends. RACHAVA *v.* KALINGAPA.

[I. L. R. 16 Bom. 716

5.—*Gotraj-Sapindas—Succession among the remoter gotraj-sapindas—Succession per capita and per stirpes.*] Among the remoter *gotraj-sapindas* the inheritance goes *per capita* and not *per stirpes.* NAGESH *v.* GURURAO.

[I. L. R. 17 Bom. 303

(4) SPECIAL HEIRS.

(*a*) MALES.

6.—*Adopted son—Natural son born after adoption.*] An adopted son is entitled to one-fourth of the estate of the adoptive father if a natural son is born after the adoption. RUKHAB *v.* CHUNILAL AMBUSHET.

[I. L. R. 16 Bom 347

7.—*Adopted son—Share of adopted son where a son is subsequently born—Mitakshara—Vyavahar Mayukha.*] In Western India, both in the districts governed by the Mitakshara and those specially under the authority of the Vyavahar Mayukha, the right of the adopted son, where there is a "legitimate son" born after the adoption, extends only to a fifth share of the father's estate. In a suit by an adopted son to recover his share in his adoptive father's estate, a son having been born to the adoptive father subsequently to the plaintiff's adoption, the Court of First Instance awarded the plaintiff a fourth share of the property in dispute. The defendant appealed to the District Court, but in appeal raised no question as to the extent of the share awarded to the plaintiff. On second appeal to the High Court it was contended that, in any event, the plaintiff was only entitled to a fifth share:—*Held* that, under the circumstances and having regard to the nature of the question, the point might be taken in second appeal on behalf of the defendant, and the High Court varied the decree by awarding the plaintiff a fifth share instead of a fourth share, but ordered the appellant (defendant) to bear his own costs of the appeal. GIRIAPA *v.* NINGAPA.

[I. L. R. 17 Bom. 100

8.—*Cousin—Sapindas—First cousin's daughter's son—Collateral succession.*] The *sapinda* relationship exists between the daughter's son and the son's son of two first cousins, the former therefore is an heir to the latter. *Uma Sunker Moitra* v. *Kali Kamal Mozumdar*, I. L. R. 6 Calc. 256 1 C. L. R. 145; affirmed on appeal by the Privy Council, I. L. R. 10 Calc. 232; 13 C. L. R. 379; L. R. 10 I. A. 138; and *Padmakumari Debi Chowdhrani* v. *Court of Wards*, I. L. R. 8 Calc. 302; L. R. 8 I. A. 229, relied on. MANIK CHAND GOLECHA *v.* JAGAT SETTANI PRANKUMARI BIBI.

[I. L. R. 17 Calc. 518

9.—*Cousin—Widow of another paternal uncle.*] By the Hindu law the sons of a paternal uncle inherit in preference to the widow of another paternal uncle of the *propositus.* RACHAVA *v.* KALINGAPA.

[I. L. R. 16 Bom. 716

10.—*Grandfather—Paternal aunt—Maternal grandfather.*] Under the Hindu law obtaining in the Madras Presidency, the maternal grandfather of a deceased Hindu succeeds to him in preference to his paternal aunt. CHINNAMMAL *v.* VENKATACHALA.

[I. L. R. 15 Mad. 421

11.—*Step-sister's son.*] A step-sister's son is entitled to inherit under the Hindu law in force in the Madras Presidency. SUBBARAYA *v.* KYLASA.

[I. L. R. 15 Mad. 300

12.—*Uncle—Maternal uncle of the half-blood—Father's paternal aunt's son—Kindred of half-blood—Bandhus.*] Under the Hindu law of inheritance prevailing in the Madras Presidency a maternal uncle of the half-blood is entitled to succeed in preference to the son of the father's paternal aunt. The former is an *atma bandhu*, the latter is a *pitru bandhu.* MUTTUSAMI *v.* MUTTUKUMARASAMI.

[I. L. R. 16 Mad. 23

(*b*) FEMALES.

13.—*Daughter—Exclusion of sons by daughters in succession to stridhan property—Mitakshara law—Mayukha law.*] According to the Mitakshara, the daughter takes an absolute estate which classes as her *stridhan*, and descends to her own heirs, *i.e.*, to her daughters to the exclusion of her sons. The plaintiff sued, as the heir of her mother, *V*, to recover certain property which *V* had inherited from her father. The defence was that plaintiff's brothers excluded her title:—*Held*, that the case being governed by the Mitak-

HINDU LAW—INHERITANCE—*continued.*

(4) SPECIAL HEIRS—*concluded.*

(*b*) FEMALES—*concluded.*

shara, (which and not the Mayukha is the chief authority in the Ratnagiri District,) the property in dispute descended to *V's* daughter (the plaintiff), and not to *Vs'* sons. JANKIBAI *v.* SUNDRA.

[I. L. R. 14 Bom. 612

14.—*Father's sister—Mother's brother—Bandhus.*] According to the Hindu law current in the Madras Presidency, the father's sister is not entitled to inherit in preference to the mother's brother:—*Semble*, per WILKINSON, J.—The father's sister is a *bandhu*. NARASIMMA *v.* MANGAMMAL.

[I. L. R. 13 Mad. 10

15.—*Grand-daughter—Bandhu — Son's daughter.*] A son's daughter is entitled to inherit to her grandfather as a *bandhu*. NALLANNA *v.* PONNAL.

[I. L. R. 14 Mad. 149

16.—*Mother — Mother's right to succeed to a childless son's property—Priority of the mother over the father—Mitakshara law—Mayukha law—Law in Ratnagiri District.*] In the Ratnagiri District the Mitakshara is the paramount authority on Hindu law. Under the Mitakshara the mother of a childless separated Hindu comes in the order of succession next after his widow and before his father. The rule of the Mayukha, that the father is to be preferred to the mother, being directly opposed to the rule of the Mitakshara, cannot prevail in the Ratnagiri District. BALKRISHNA BAPUJI APTE *v.* LAKSHMAN DINKAR.

[I. L. R. 14 Bom. 605

17.—*Sisters—Sisters take absolutely in severalty—Daughters.*] In the Bombay Presidency sisters take by inheritance from a brother absolute estates in severalty. On the death of a son without leaving wife or child his estate goes to his mother, and on her death to his sisters as his heirs The sisters take an absolute estate in severalty and not as joint tenants. RINDABAI *v.* ANACHARYA.

[I. L. R. 15 Bom. 206

18.—*Son's widow—Property of father-in-law.*] Where a son predeceased his father, and the son's widow subsequently succeeds to her father-in-law's property as his heir, she takes the same estate in it as she does in property inherited by her from her husband. GADADHAR BHAT *v.* CHANDRABHAGABAI.

[I. L. R. 17 Bom. 690

19.—*Widow—Joint family—Widow's right—Maintenance—Gotraja-Sapinda.*] The widow of an undivided brother does not take a life estate. She is only entitled to maintenance. She may perhaps succeed her brother-in-law as a *gotraja-sapinda*. MANJAPPA HEGADE *v.* LAKSHMI.

[I. L. R. 15 Bom. 234

HINDU LAW—INHERITANCE—*continued.*

(5) ILLEGITIMATE CHILDREN.

20.—*Son of Sudra by concubine—Bengal school of law.*] According to the Bengal school of Hindu law, the son of a Sudra by a kept woman or continuous concubine does not inherit his father's estate. *Narain Dhara* v. *Rakhal Gain*, I. L. R. 1 Calc. 1, followed; *Inderan Vulungypuly Tuver* v. *Ramaswamy Pandia Talaver*, 3 B. L. R. P. C. 1; 13 Moo. I. A. 141, explained; *Rahi* v. *Govinda Valad Teja*, I. L. R. 1 Bom. 97; *Sadu* v. *Baiza*, I. L. R. 4 Bom. 37; *Datti Parisi Nayudu* v. *Datti Bungaru Nayudu*, 4 Mad. H. C. 204; *Krishnayyan* v. *Muttusami*, I. L. R. 7 Mad. 407; *Sarasuti* v. *Mannu*, I. L R. 2 All. 134; and *Hargobind Kuari* v. *Dharam Singh*, I. L. R. 6 All. 329, explained and distinguished. KIRPAL NARAIN TEWARI *v.* SUKURMONI.

[I. L. R. 19 Calc. 91

21.—*Sudras—Succession—Illegitimate son's right to succeed to the whole estate.*] The plaintiff was one of three daughters of one *S*, a Lingayet, who died in 1870 leaving immoveable property. The defendants were his illegitimate sons. After his death, his widow, one of his daughters, and the defendants continued to live together in union, and managed the property jointly. The widow died in 1880, and the defendants took possession of all the property. In 1885 the plaintiff brought this suit claiming to recover it, alleging that one of her sisters was disentitled from inheriting by disease; that the other was rich, and that the defendant's illegitimacy excluded them. The Court of First Instance rejected the plaintiff's claim. The District Judge in appeal held that she was entitled to one-sixth of the property only, and the defendants to one-half. The defendants appealed to the High Court, contending that on the death of the widow the entire property survived to them:—*Held*, that the defendants were not entitled to more than the half to which they succeeded immediately on the death of their father *S*. The other half went either to the widow or to the daughters. If it went to the widow, she plainly took it as one of a class of persons who exclude the illegitimate son's right to more than half (Mayne's Hindu Law, para. 466, 4th ed.) If it went to the daughters on the father's death, there was no evidence to show that the defendants had had adverse possession of it as against the plaintiff before the widow's death in 1880. SHESGIRI *v.* GIREWA.

[I. L. R. 14 Bom. 282

22.—*Succession to out-casted Brahmin—Brothers of deceased remaining in caste—Sons of deceased by Bania widow—Doctrine of justice, equity and good conscience.*] *K*, a Brahmin, lived with a Bania widow, for which offence he was out-casted. He left his family and his village and went to live elsewhere, taking the widow with him. He had sons by her, and he and his family lived as cultivators and acquired property. *K* died in his new home and left the widow and their sons in possession of the property which he had acquired. This being so, the brothers of the deceased *K* sold-

HINDU LAW—INHERITANCE—*continued.*

(5) ILLEGITIMATE CHILDREN—*concluded.*

the property which had been thus acquired by him to one *R K*. *R K* thereupon sued his vendors and the surviving sons of *K* by the widow, together with their mother and the widow of a deceased son, for recovery of the property:—*Held* that the sons of *K* by the Bania widow with whom he had been living and their mother were entitled to remain in possession of the property acquired by *K* as against the brothers of deceased who had remained in caste. RADHA KISHEN *v.* RAJ KUAR.

[I. L. R. 13 All. 573

(6) DANCING-GIRLS.

23.—*Deva dasi—Succession to property of dancing-girl — Outcaste — Adopted niece — Brother.*] On the death of a prostitute dancing-girl her adopted niece belonging to the same class succeeds to her property, in whatever way it was acquired, in preference to a brother remaining in caste. NARASANNA *v.* GANGU.

[I. L. R. 13 Mad. 133

24.—*Property acquired by dancing-girls—Gains of prostitution.*] In a suit by a brother against his sister for a share of property, valued at a large sum, on the ground that it was ancestral property left by their mother, it was found that the parties belonged to the *bogam* or dancing-girl caste residing in the Godavari district, and that the property had been acquired by the defendant as a prostitute:—*Held*, that the plaintiff was not entitled to any share in property so acquired. He was, however, held entitled to a moiety of a small portion which had belonged to the mother. CHANDRAREKA *v.* SECRETARY OF STATE FOR INDIA.

[I L. R. 14 Mad. 163

(7) IMPARTIBLE PROPERTY.

25.—*Mitakshara law—Rules governing succession.*] For determining who is to be heir to an impartible estate, the same rules apply which also govern the succession to partible estates, though the estates can be held by only one member of the family at a time. JOGENDRO PHUPATI HURROCHUNDRA MAHAPATRA *v.* NITYANAND MAN SINGH.

[I. L. R. 18 Calc. 151

[L. R. 17 I. A. 128

26.—*Impartibility of zamindari shewn by evidence—Grant by sanad in* 1802 *of zamindari without change of rule of succession by primogeniture—Madras Regulation XXV of* 1802.] The question whether an estate is impartible and descends by the law of primogeniture, or is subject to the ordinary Hindu law of inheritance, must be decided in each case according to the evidence given in it. The result of the evidence in this suit was to show that before, and in, the year 1802, the zamindar was in possession of the Devarakota zamindari, by right of primogeniture, as an impartible estate; and that he was so regarded by the Government. On the passing of Madras

HINDU LAW—INHERITANCE—*continued.*

(7) IMPARTIBLE PROPERTY—*continued.*

Regulation XXV of 1802, and the issue to him of a *sanad-i-milkiyat-i-istimrari* in accordance with it, he acquired a permanent property in the zamindari lands at a fixed assessment, but they remained heritable as before; the estate remained entire; and there was no evidence of any intention on the part of the Government to alter the nature of the tenure. What was said in the judgment in the *Hansapur case*, 12 Moo. I. A. 1, was applicable here. The estate continued to be impartible, and the rule of succession to it was not altered. It descended by the rule of primogeniture. SRIMANTU RAJA YARLAGADDU MALLIKARJUNA *v.* SRIMANTU RAJA YARLAGADDU DURGA.

[I. L. R. 13 Mad. 406

[L. R. 17 I. A. 134

27.—*Zamindari formerly held under raj—Zamindari originally existing before* 1759—*Grant by Government in* 1802, *and again in* 1835, *of the same zamindari—Absence of intention to grant it as impartible—Sanad-i-milikyat-i-istimrari.*] Although it might be taken that the Mirangi zamindari was formerly held on a military tenure under a raj, and that it continued to be held on the same tenure after it had been incorporated in another zamindari, and, subsequently when, by conquest, it became part of the Vizianagaram zamindari, which was dismembered in 1795, and, even if impartibility was the rule then applicable to the estate, yet the subsequent dealings with the zamindari, the nature and terms of the grants under which it was held after 1802, and the absence of proof of its having been impartible during the present century, also the character of the estate, which was in no way distinguishable from that of an ordinary zamindari assessed to the revenue, all led to the conclusion that the zamindari was now partible. It was clear from the *kabuliyat*, or instrument of assent to the *sanad-i-milkiyat-i-istimrari* of 25th April 1804, that the latter was in the ordinary form of such grants, and there was no ground for inferring that the Government intended to create an impartible zamindari, or to restore an old one with impartibility attached. In 1835, there was, for a second time, such a dealing with the estate by the Government, in granting it again by *sanad*, as showed that there was no intention to the effect above mentioned. The case of the *Hansapur Zamindari*, 12 Moo. I. A. 1, situate in Behar, as to which their Lordships in 1867 held that it must be taken to retain its previous old quality of impartibility, after having been granted in 1790, was distinguished. SATRUCHARLA JAGANNADHA RAZU *v.* SATRUCHARLA RAMABHADRA RAZU.

[I. L. R. 14 Mad. 237

ZAMINDAR OF MARANGI *v.* SATRUCHARLA RAMABHADRA RAZU.

[L. R. 18 I. A. 45

Affirming the decision of the High Court in—JAGANATHA *v.* RAMABHADRA.

[I. L. R. 11 Mad. 380

HINDU LAW—INHERITANCE—*continued.*

IMPARTIBLE PROPERTY—*continued.*

28—*Impartible zamindari—Obstructed inheritance—Interest of holders of—Inheritance by daughter's sons.*] In a suit to recover possession of the impartible zamindari of Shivaganga, it appeared that the Istimrar zamindar died in 1829, and that after an interval of wrongful possession by his brother and his descendants, his daughter established her title to succeed him and was placed in possession in 1864. She died in 1877 leaving the present plaintiff, her son, and three daughters her surviving. A suit was then brought by the father of the present defendant, who was the son of her elder sister (deceased), against the present plaintiff and the daughter of the late Rani for possession of the zamindari to which he claimed to be entitled by right of inheritance. A decree was passed for the plaintiff in that suit, under which he obtained possession of the zamindari and retained it until his death in 1883, when he was succeeded by the present defendant. The plaintiff now sued as above, claiming that the right to the zamindari had devolved on him and not on the defendant on the death of the plaintiff in the former suit:—*Held*, (1) that the defendant's father had not succeeded to a qualified heritage, nor to a mere right of management of joint family property in which the plaintiff had a right of survivorship, but that he had succeeded to the estate as full owner, and had therefore become a fresh stock of descent; (2) that accordingly, nearness or remoteness of relationship to the Istimrar zamindar was immaterial, and the defendant's right of succession was not affected by the fact that the whole class of the Istimrar zamindar's daughter's sons had not been exhausted. MUTTUVADUGANATHA TEVAR *v.* PERIASAMI.

[I. L. R. 16 Mad. 11

29.—*Impartible poliem—Evidence of impartibility—Pannai lands attached to the poliem—Maintenance and marriage expenses of junior member of the family of poligar.*] The step-brother of the holder of a *poliem* in the Madura district, of which the gross income was about Rs. 15,000 a year, sued him for a partition of the estate and in the alternative for maintenance. It appeared that the *poliem* had been held on military tenure from the sixteenth century, that it had never been partitioned, and that the custom of impartibility obtained in a large number of similar *poliems* in the same district. In 1821 and in 1842 enquiries were made of members of the zamindar's family and other persons connected with the zamindari as to the nature of the estate, and their recorded answers showed that they understood the estate to be impartible and that it descended to a single heir:—*Held*, (1) that the *poliem* was impartible; (2) that the plaintiff was entitled to decree for a monthly payment to him of Rs. 60 for his maintenance. The plaintiff's claim extended to certain *pannai* lands within the limits of the zamindari: some of which had been handed down from zamindar to zamindar since 1831, others having been purchased by the plaintiff's father. The High Court found that they had been recognised

HINDU LAW—INHERITANCE—*continued.*

(7) IMPARTIBLE PROPERTY—*concluded.*

and dealt with as part and parcel of the zamindari. *Held*, that the *pannai* lands were impartible, and the plaintiff was not entitled to a share in them or in the cattle, &c., used for cultivating them. The plaintiff further claimed a sum of Rs. 4,000, the amount of a loan alleged to have been contracted by him for the purposes of his marriage. It appeared that the cost of the marriage had been defrayed by the bride's brother. *Held*, that the plaintiff was not entitled to a decree on this account, although if he had incurred debts for the purposes of his marriage the defendant would have been liable. LAKSHMIPATHI *v.* KANDASAMI.

[I. L. R. 16 Mad. 54

(8) JOINT PROPERTY AND SURVIVORSHIP.

30.—*Mitakshara law.*] The principle of survivorship under Mitakshara law is limited to two descriptions of property, *viz.*: (1) That which is taken as unobstructed heritage, and property acquired by means of it; and (2) that which forms the joint property of re-united co-parceners. Property inherited by brothers from their maternal grandfather is not of those descriptions. JASODA KOER *v.* SHEO PERSHAD SINGH.

[I. L. R. 17 Calc. 33

31.—*Mitakshara law—Sudras—Illegitimate son—Survivorship—Impartible property.*] Under the Mitakshara, among Sudras, where a father left a son by a wedded wife, and an illegitimate son, the ordinary rule of survivorship incidental to a family co-parcenary was held to apply; and the illegitimate son, having survived the legitimate, was held entitled by survivorship to succeed to the family estate, which was impartible and appertained to a raj, on the death of his brother without male issue. *Sadu* v. *Baiza*, I. L. R. 4 Bom. 37, referred to and approved. JOGENDRO BHUPATI HURROCHUNDRA MAHAPATRA *v.* NITYANAND MAN SING.

[I. L. R. 18 Calc. 151
[L. R. 17 I. A. 128

(9) REUNION.

32.—*Succession, application of the law of.*] Where there has been a reunion between persons expressly enumerated in the text of Brihashpati, *viz.*, father, brother and paternal uncle, and where their descendants continue to be members of the reunited Hindu family, the law of inheritance applicable to the latter is the same as in the case of the death of any of those between whom the reunion took place. *Tara Chand Ghose* v. *Pudum Lochun Ghose*, 5 W. R. 249; 1 Ind. Jur. N. S. 207; *Gopal Chunder Daghoria* v. *Kenaram Daghoria*, 7 W. R. 35, and *Ramhari Surma* v. *Trihiram Surma*, 7 B. L. R. 336; 15 W. R. 412, referred to. ABHAI CHURN JANA *v.* MANGAL JANA.

[I. L. R. 19 Calc. 634

33.—*Divided brothers of the full blood—Son of a re-united half-brother.*] In 1872 a partition took place between the members of a joint Hindu

HINDU LAW—INHERITANCE—*continued.*

(9) REUNION—*concluded.*

family, being three brothers of the full and three of the half-blood. Two of the brothers, being the sons of different mothers, subsequently re-united. The elder took the plaintiff in adoption and died during the infancy of the plaintiff. The re-united half-brother retained possession of their joint property till his death, when the present suit was instituted to recover his share in the property. The two uterine brothers of the deceased resisted the plaintiff's claim :—*Held*, that the plaintiff was entitled to a one-third share. RAMASAMI *v.* VENKATESAM.

[I. L. R. 16 Mad. 440

(10) DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE.

(*a*) INSANITY.

34.—*Proof of insanity—Appointment of guardian under Act XXXV of* 1858—*Disability to sue.*] Exclusion, under the Hindu law, of a claimant from the inheritance on the ground of insanity cannot be inferred merely from his being described in the plaint as insane, or from his suing by a guardian certified under Act XXXV of 1858. Although he might be incompetent to commence the suit, or to proceed with it except by a guardian, this did not establish that he was excluded when the succession opened. RAN BIJAI BAHADUR SINGH *v.* JAGATPAL SINGH. JAGATPAL SINGH *v.* RAN BIJAI BAHADUR SINGH. BISHESHAR BAKSH SINGH *v.* RAN BIJAI BAHADUR SINGH.

[I. L. R. 18 Calc. 111
[L. R. 17 I. A. 173

35—*Idiotcy—Madness.*] The rule of Hindu law which disqualifies "idiots" and "madmen" from inheritance should be enforced only upon the most clear and satisfactory proof that its requirements are satisfied. The rule does not contemplate the disqualification of persons who are merely of weak intellect in the sense that they are not up to the average standard of human intelligence or endued with the business capacity to manage their affairs properly. *Tirumamagal Ammal* v. *Ramasvami Ayyangar*, 1 Mad. 214, distinguished. SURTI *v.* NARAIN DAS.

[I. L. R. 12 All. 530

(*b*) MARRIAGE.

36.—*Marriage of Hindu widow after conversion—Marriage Act (III of* 1872), *s.* 2—*Hindu Widows Marriage Act (XV of* 1856), *s.* 2—*Forfeiture of property of first husband—Act XXI of* 1850.] A Hindu widow inherited the property of her husband, taking therein the estate of a Hindu widow. She afterwards married a second husband, not a Hindu, in the form provided by Act III of 1872, having first made a declaration, as required by s. 10 of that Act, that she was not a Hindu:—*Held*, by the majority of the FULL BENCH (PRINSEP, J., dissenting) that by her second marriage she forfeited her interest in her first husband's estate in favour of the next heir, all rights which any widow may have in her deceased husband's property by inheritance to her husband being expressly determined by s. 2 of the Hindu Widows Marriage Act (XV of 1856) upon her re-marriage. *Gopal Singh* v. *Dhungazee*, 3 W. R. 206, overruled. PRINSEP, J.—Section 2 of Act XV of 1856 does not apply to all Hindu widows re-marrying, but only to Hindu widows re-marrying as Hindus under Hindu law as provided by the Act. MATUNGINI GUPTA *v.* RAM RUTTON ROY.

[I. L. R. 19 Calc. 289

HINDU LAW—INHERITANCE—*concluded.*

(10) DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—*concld.*

(*b*) MARRIAGE—*concluded.*

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See SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

[I. L. R. 15 Bom. 13

(1) PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

1.—*Evidence of partition of joint family—Presumption—Concurrent decision on fact—Practice of Privy Council—Ground of appeal.*] In a suit to enforce an alleged right of one brother against another, to separate proprietary possession of a share in joint family estate, the concurrent findings of the Court below were definitely to the effect that a partition had taken place, after which the brothers had been no longer joint as

HINDU LAW—JOINT FAMILY—*continued.*

(1) PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY—*concluded.*

to their interests. The Courts had fully gone into the case on either side, receiving the evidence offered by either party, and they had considered the whole of it. Therefore, it could not be effectively urged, as a ground of appeal, that the Courts below, in coming to the above conclusion, had erred in putting the burden of proof unduly upon the plaintiff, or disregarded the presumption arising from the original state of the family. RAM CHARAN *v.* DEBI DIN.

[I. L. R. 13 All. 165

(2) NATURE OF AND INTEREST IN PROPERTY.

(*a*) ACQUIRED PROPERTY.

2.—*Gains of science—Fruits of elementary education impartible—Earnings of different co-sharers thrown into the joint-stock—Estoppel—Alienation of joint-property by manager of family.*] Three brothers—*K*, *M* and *N*—were members of a joint Hindu family living at Nagothna. *M* and *N* went to Baroda and obtained employment there as *karkuns*. They had not received anything more than a rudimentary education before they left their family house at Nagothna. *K* remained at home to look after the affairs of the family. *M* and *N* used to remit moneys from time to time for the support of the family at Nagothna. With money supplied by *M* and *N*, *K* redeemed the family house from mortgage and purchased lands at Nagothna, *varvatni* and *vagni*. These lands were entered in the revenue records in *K's* name. *K* managed the whole property and applied the rents to the support of the family. In 1881 *K* mortgaged the property. In 1885 *M* and *N* brought this suit to recover possession of the house and lands, alleging that they were their self-acquired property, and that *K* had no power to alienate them. They also prayed, in the alternative, for a partition of their two-thirds share of the property:—*Held*, that the plaintiffs having received only a rudimentary education in their family, their earnings in the exercise of their profession as *karkuns* were self-acquired and impartible, and that the property purchased or redeemed with those earnings would also be impartible, unless it appeared that they had voluntarily thrown such property into the joint-stock, with the intention of abandoning all separate claims upon it. If they did so, the property would thereupon become joint property. *Held*, also, that the plaintiffs having held out *K* as the manager of the whole estate so as to induce outsiders dealing with him to believe that he had authority to mortgage the whole interest of the three brothers in the property, they (the plaintiffs) were estopped from contending that the mortgages effected by *K* were not binding on their shares, if *K* did, as a matter of fact, borrow the money for the benefit of the family. KRISHNAJI MAHADEV *v.* MORO MAHADEV.

[I. L. R. 15 Bom. 32

HINDU LAW—JOINT FAMILY—*continued.*

(3) DEBTS AND JOINT FAMILY BUSINESS.

3.—*Family firm—Cutchi Memons—Partnership in firm—Onus probandi—Adjudication of insolvency under s. 9 of Insolvent Act.*] By an order of adjudication one *H*, together with eight other persons alleged to be his partners in the firm of *H M C*, was adjudged an insolvent. *H* appealed, denying that he was a partner. All of the insolvents were Cutchi Memons, and were members of the same family. The firm had existed for forty years, having been established by the great-grandfather of the appellant, and had ever since been carried on under the same name by the family of the founder. The petitioning creditors alleged that the members of the insolvent's family lived together and were joint in food and estate, and that the firm was a family firm; that the appellant's father had been principal manager of the firm in his lifetime, and that on his death, two years previously, the appellant had taken his place. The appellant denied that he was joint with the other members of the family, or that he had ever been a partner, or had represented himself to be a partner in the firm:—*Held*, confirming the order of the Court below, (1) that, being a Cutchi Memon, the rules of Hindu law and custom applied to the appellant, and that his position with regard to the family property was to be determined by the same conditions as would apply in the case of a member of a joint and undivided Hindu family; (2) that the firm in question was a family firm, and was the property of a family subject to Hindu law; that whatever might have been the appellant's position previously, it was clear that on his father's death his father's share in the firm by law descended to the appellant and his brothers, if he had any. He then became a partner in the firm, if he had not been so already. It was open to him to show that he did not become a partner; but the facts above mentioned being established, the burden rested on him of displacing them, and of showing that he did not become a member of the family firm. IN THE MATTER OF HAROON MAHOMED.

[I. L. R. 14 Bom. 189

(4) POWERS OF ALIENATION BY MEMBERS.

(*a*) MANAGER.

4.—*Power of manager to alienate joint family property.*] The holder of an impartible zamindari governed by the law of primogeniture, having a son, executed a mining lease of part of the zamindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor, his minor son and successor, by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards), now sued the assignee of the lessee to have the lease set aside:—*Held*, *per* MUTTUSAMI AYYAR and WILKINSON, JJ. (affirming the judgment of PARKER, J.), that the lease was not one which a managing member of an ordinary joint family governed by Mitakshara

HINDU LAW—JOINT FAMILY—*continued.*

(4) POWERS OF ALIENATION BY MEMBERS —*continued.*

(*a*) MANAGER—*concluded.*

law could providently enter into. BERESFORD *v.* RAMASUBBA.

[I. L. R. 13 Mad. 197

(*b*) OTHER MEMBERS.

5.—*Mortgage by a co-parcener—Liability of his share after his death to satisfy the mortgage.*] Where a member of a joint Hindu family makes a mortgage, such mortgage, being good when made, creates a valid charge on the property to the extent of his share, which cannot be defeated by his death. RANGAYANA SHRINIVASAPPA *v.* GANAPABHATTA.

[I. L. R. 15 Bom. 673

6.—*Mortgage — Attempt by one co-sharer to mortgage his undivided share on his own account—Effective sale of part of such a share in execution of a decree against the co-sharer.*] Under the Mitakshara, as administered by the High Courts of the North-West Provinces and Bengal, an undivided share in ancestral estate, held by a member of a joint family in co-parcenary, cannot be mortgaged by him on his own private account, without the consent of those who share the joint estate. An attempted mortgage by one of them does not create a charge which can have priority over purchases at execution-sales made *bonâ fide*, and without notice of it; such purchasers having acquired the right of compelling the partition which the debtor might have compelled, had he been so minded, before the alienation by the sale of his share. As to the invalidity of the attempted mortgage, *Sadabart Prasad Sahu* v. *Foolbash Koer*, 3 B. L. R. F. B. 31, referred to, and approved. As to the right of the purchaser of the share at a judicial sale, *Deen Dayal Lal* v. *Jugdeep Narain Singh*, I. L. R. 3 Calc. 198; 4 L. R. I. A. 247, followed, and reference made to the distinction mentioned in the latter case, between a voluntary alienation without such consent, and an involuntary one as the result of the execution of a decree against the co-partner, and a judicial sale thereunder. A father and son composed a joint family, holding a share of ancestral lands. The son mortgaged to a banker, to secure a loan, his interest in the undivided share. His father, without having notice of the mortgage, purchased, in good faith, portions of the estate forming part of the son's joint share, at sales in execution of decrees against the latter, obtained by his creditors:—*Held*, that the son's interest, in the portions so sold, passed to the father, whose rights therein as purchaser at the judicial sales were not affected by the mortgage. The mortgagee could, in execution of a money-decree, which he might obtain against the mortgagor, personally attach and bring to a judicial sale such parts of the mortgaged property as had not already been sold, but not in virtue of the mortgage. BALGOBIND DAS *v.* NARAIN LAL.

[I. L. R. 15 All. 339

[L. R. 20 I. A. 116

HINDU LAW—JOINT FAMILY—*continued.*

(4) POWERS OF ALIENATION BY MEMBERS —*continued.*

(*b*) OTHER MEMBERS—*continued.*

7.—*Ancestral estate held jointly by family under the Mitakshara—Sale attempted by one member of his share—Effect of partition—On death of vendor, right by survivorship of other members—Equity of purchaser to have a lien against survivor.*] As to ancestral estate under the Mitakshara, so long as the estate is undivided and the share of a member of the family is indefinite, he cannot dispose of it without the consent of his co-parceners:—*Held*, that, in a joint family, a nephew, having taken by survivorship the undivided share of an uncle deceased, was entitled to recover that share from a purchaser, to whom the uncle in his lifetime had sold it without the consent of his co-parceners, and without necessity; *held*, also, that the purchaser could have no lien on the share for return of the purchase-money. As soon as partition is made;—actual partition not being in all cases essential, as for instance where the family has agreed to hold their estate in definite shares, or a member's undivided share, in execution of his creditor's decree, has been attached;—that will be regarded as sufficient to support the alienation of a member's interest, as if it had been his acquired property. As regards members of a family living at the time when their alienation was set aside at the instance of another member, the Court, in *Mahabeer Persad* v. *Ramyad Singh*, 12 B. L. R. 90, justly ordered that the property should be thenceforth possessed in defined shares, and that the shares of the members who had joined in the sale should be subject to a lien for the return of the purchase-money. But that case must be distinguished from the present. Here, the accrued right of survivorship precluded any such course. The nephew not being responsible for the personal debts and obligations of his uncle, what might have been an enforcible equity against the interest of the latter, while it existed, could not affect the interest which had passed to a surviving co-parcener. MADHO PARSHAD *v.* MEHRBAN SINGH.

[I. L. R. 18 Calc. 157

[L. R. 17 I. A. 194

8.—*Mitakshara law—Mortgage of undivided shares in joint family property—Consent of co-sharer.*—*A*, *B*, and *C* together formed a joint Mitakshara family. On the 27th June 1872 *A* and *B*, without the consent of *C*, for their own benefit and without legal necessity, executed a bond in favour of *J* and *I* (defendants, 2nd party), mortgaging to them certain joint properties. On the 14th August 1882, *J* and *I* obtained an *ex parte* decree on their bond against *A*, *B*, and *C*, and in execution *mouzas* Pipra and Bangra were put up to sale on the 16th March 1888, and purchased by *H* (defendant, 1st party). Prior to the institution by *J* and *I* of their suit, *A*, *B*, and *C* on the 24th August 1881 together mortgaged *mouzas* Pipra and Bangra to *N*. On the 13th March 1884, *N* obtained an *ex parte* decree on his mortgage, and in execution thereof, *mouza* Pipra

HINDU LAW—JOINT FAMILY—*continued.*

(4) POWERS OF ALIENATION BY MEMBERS —*concluded.*

(*b*) OTHER MEMBERS—*concluded.*

was sold on the 21st November 1884. The plaintiffs purchased the property, and duly obtained possession from the Court. In a suit by the plaintiffs for a declaration that the mortgage of the 27th June 1872 was invalid, and the decree and execution-sale upon the basis thereof ineffectual as against them, and for confirmation of possession, and in the alternative that if the mortgage-bond was valid that the amount due thereunder and chargeable on *mouza* Pipra might be determined, and the plaintiffs declared entitled to redeem upon payment of such amount:—*Held*, that although *A* and *B* had no authority, without the consent of their co-sharer *C*, to mortgage their undivided shares to *J* and *I*, yet as the plaintiffs derived their title from those mortgagors, they were not entitled to recover such shares without paying to *H*, who by his auction-purchase had acquired the rights of the mortgagees, the money advanced on the mortgage-bond of 1872 with interest, and that the same was a charge on such shares. *Mahabeer Persad* v. *Ramyad Singh* 12 B. L. R. 90: applied in principle. *Sadabart Prasad Sahu* v. *Foolbash Koer*, 3 B. L. R. F. B. 31: and *Madho Parshad* v, *Mehrban Singh*, I. L. R. 18 Calc 157: L. R. 17 I. A. 194, distinguished. *Nilakant Banerji* v. *Suresh Chandra Mullick*, I. L. R. 12 Calc. 414, referred to. JAMUNA PARSHAD *v.* GANGA PARSHAD SINGH. HARDHANI LALL *v.* GANGA PARSHAD SINGH.

[I. L. R. 19 Calc. 401

9.—*Alienation to pay off mortgage executed by widow to pay debt of husband—Revival of a barred debt by the widow of a deceased Hindu.*] Although a managing member of a joint Hindu family cannot as such revive a barred debt as against his co-parceners, it is competent to the widow of a deceased member of the family, who represents the inheritance for the time being and in whom it is a pious duty to pay her husband's debts, to bind the reversion by a mortgage executed to secure such debts though they were barred at the time of its execution. Where therefore the managing members of an undivided Hindu family, after the death of the widow, sold family property for the purpose of discharging such a mortgage:—*Held*, that the sale was binding on the co-parcenary. KONDAPPA *v.* SUBBA.

[I. L. R. 13 Mad. 189

(5) SALE OF JOINT-FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS.

10.—*Sale of joint-family estate in execution of a decree against the father upon debts contracted by him—Liability of son's share—Alienation by father.*] It is only on condition of the son's showing that the father's debt has been contracted for an illegal or immoral purpose that the son, upon a decree against the father alone being executed by the attachment and sale of the family estate,

HINDU LAW—JOINT FAMILY—*continued.*

(5) SALE OF JOINT-FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS—*continued.*

can claim to have the liability limited to the father's own share under the Mitakshara law. In the absence of such proof, whether the entirety of the family estate has been transferred at the sale in execution, or not, is a question of fact in each case dependent on what was understood to be brought, and has been brought, to sale. *Nanomi Babuasin* v. *Modhun Mohun*, L. R. 13 I. A. 1: I. L. R. 13 Calc. 21; and *Bhagabut Pershad Singh* v. *Girja Koer*, L. R. 15 I. A. 99: I. L. R. 15 Calc. 717, referred to and followed. The description of the property in a certificate of sale as the right, title and interest of the judgment-debtor is consistent with every interest, which he might have caused to be sold, passing at the sale; and does not necessarily impart that when the father of a joint-family is the judgment-debtor nothing is sold but his interest as a co-sharer. MAHABIR PERSHAD *v.* MOHESWAR NATH SAHAI.

[I. L. R. 17 Calc. 584

S.C. MAHABIR PERSHAD *v.* MARKUNDA NATH SAHAI.

[L. R. 17 I. A. 11

11.—*Sale of joint-property in execution of decree —Decree against Hindu father—Interest of undivided son—Certificate of sale.*] In execution of a decree for sale passed on a hypothecation-bond, all the land comprised in the security was attached. The judgment-debtor was a member of an undivided family; his son put in no claim in execution, but on a claim put in by his nephew it was ordered that the right, title and interest of the judgment-debtor be sold. The decree-holder became the purchaser, and having obtained a sale certificate which recited that "all the interest of the judgment-debtor" was sold, he was put in possession of all the land, part of which he leased to the son. Subsequently the nephew obtained a decree for his share against the decree-holder, and then purchased the rest of the land from him. In a suit by the son against the nephew to recover his share, the plaintiff having failed to prove that the judgment-debt had been incurred for purposes not binding on him:—*Held*, that the entire estate less the interest of the nephew was sold to the decree-holder, and consequently the son's interest had passed to him. GNANAMMAL *v.* MUTHUSAMI.

[I. L. R. 13 Mad. 47

12.—*Decree against manager of debt due by the family—Sale in execution of such decree, effect of, on the other co-sharers though not parties to the decree.*] The plaintiffs and their brother *E* were in joint occupation of certain *thikans* in a *khoti* village. *E* being the eldest brother was in management of the family estate. In 1877 the *khot* sued *E* alone for arrears of assessment due on the *thikans* in question, obtained a decree, and in execution put up the *thikans* to sale. Defendants 2 to 5 became the auction-purchasers, and were

HINDU LAW—JOINT FAMILY—*continued.*

(5) SALE OF JOINT-FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS—*continued.*

put into possession by the Court. Thereupon the plaintiffs sued for a partition of their five-sixths share of the *thikana* sold, alleging that they were not bound by the Court-sale, as they were not parties to the *khot's* suit against their brother or to the execution-proceedings:—*Held*, that the assessment for which the *khot* obtained a decree against *E* being due by the whole family, the sale in execution passed the shares of the plaintiffs, as well as that of their brother, to the auction-purchasers. *Daulat Ram* v. *Mehr Chand*, I. L. R. 15 Calc. 70; L. R. 14 I. A. 187, followed, by which *Lakshman Venkatesh* v. *Kashinath*, I. L. R. 11 Bom. 700; and *Maruti Narayan* v. *Lilachand*, I. L. R. 6 Bom. 564, are overruled. HARI VITHAL *v.* JAIRAM VITHAL.

[I. L. R. 14 Bom. 597

13.—*Money-decree against father—Auction-purchaser at such sale.*] In the absence of special circumstances showing an intention to put up the entire interest of the family in the property sold in execution of a money-decree against the father, only the interest of the father passes to the auction-purchaser, regard being had to *Hurdey Narain Sahu* v. *Ruder Perkash Misser*, L. R. 11 I A. 26: I L. R. 10 Calc. 626; and *Simbhunath* v. *Golab Sing*, L. R. 14 I. A. 77: I. L. R. 14 Calc. 572. MARUTI SAKHARAM *v.* BABAJI.

[I. L. R. 15 Bom. 87

14.—*Mortgage of ancestral property by father of joint family—Decree on mortgage—Sale in execution of decree—Extent of the right, title and interest sold.*] *A* mortgaged his family property to *C* Subsequently *C* got a decree upon his mortgage, and purchased the property at an auction-sale held in execution of the decree. In a suit brought by *C's* son against the heirs of *A* to recover possession of the property:—*Held*, that, having regard to the language of the mortgage-deed, there could be no doubt that the entire family property was intended to be mortgaged. The auction-purchaser, therefore, took the whole interest in the property, and not merely the interest of *A* alone. *Simbhunath Pande* v. *Golap Sing*, I. L. R. 14 Calc. 572; L. R. 14 I. A. 77, distinguished. *Bhagbut Pershad Singh* v. *Girja Koer*, I. L. R. 15 Calc. 717; L. R. 15 I. A. 101, followed. PEMRAJ CHANDRABHAU *v.* SAVALYA GAJABA.

[I. L. R. 15 Bom. 293

15.—*Ancestral property—Father's debt—Decree against father—Liability of family property—Purchaser, rights of—Civil Procedure Code (XIV of 1882), ss. 318, 332, 333.*] In a suit for specific performance of a certain contract for the sale of land which the defendant had failed to complete, the plaintiff obtained a decree against the defendant for the repayment of the earnest-money and his costs of suit. In execution of this decree the plaintiff attached the whole of the property, which the defendant had agreed to sell. A

HINDU LAW—JOINT FAMILY—*continued.*

(5) SALE OF JOINT-FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS—*continued.*

warrant for sale was duly issued, and claims were advertised for. The sons of the defendant thereupon appeared before the Commissioner and claimed to be entitled to three-fourths of the property, which they alleged was ancestral. Their claim was not investigated, but to save time it was agreed that a note should be made in the proclamation of sale, that the sons claimed to be interested in the said lands and premises, on the ground that they were ancestral, and that the one-fourth share of the defendant only could be sold by the attaching creditor. Under this proclamation the right, title and interest of the defendant in the property were sold. At the sale the sons gave notice of their claim, the property was duly sold, and the purchaser was put into possession, the claimants being dispossessed. The claimants then took out a summons under s. 332 of the Civil Procedure Code calling upon the purchaser to show cause why they should not be restored to possession:—*Held* (1) that the judgment-debt due by the defendant was one which the plaintiff could enforce, if necessary, against ancestral property in the hands of the defendant to the extent of the whole interest therein of the defendant and his sons, as it was not an immoral or illegal debt; (2) that, assuming that the property in question was ancestral, what the purchaser bought was the whole property, and not merely the right which the defendant might have as the father of the family to a share of it on partition. The plaintiff evidently did not acknowledge any right in the claimants, but intended to sell the very largest right the defendant might have in the property, which, as the judgment-debt was one for which the family property was liable, was the whole estate of the joint family; (3) that the purchaser who had bought the whole of the rights of the family in the property, was entitled to the possession of what he bought, and was not required to file a suit for partition, because the shares of all the co-parceners had passed to him; (4) assuming that the property was ancestral, the claimants were not in possession on their own account, and were, therefore, not entitled to be restored under s. 332 of the Civil Procedure Code. A member of a joint Hindu family cannot say that he is in possession of any particular portion of the joint property on his own account. His possession is the possession of the family; (5) what all the sons were entitled to, was to try the fact or nature of the debt due to the plaintiff in a suit of their own. In such suit they would have to prove that the debt was not such as to justify the sale. COOVERJI HIRJI *v.* DEWSEY BHOJA.

[I. L. R. 17 Bom. 718

16.—*Execution of mortgage-decree against the estate of a deceased judgment-debtor, member of a joint family under Mitakshara law—Survivorship—Hindu law.*] On an application for the execution of a mortgage-decree the following order was

HINDU LAW—JOINT FAMILY—*continued.*

(5) SALE OF JOINT-FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS—*continued.*

made:—"In this case the sale was stayed awaiting the disposal of the regular suit. It being not necessary to keep the case pending, it is ordered that, attachment being allowed to stand, the case be struck off for the present." The judgment-debtor, the father of a joint Hindu family subject to the Mitakshara law, having died, a fresh application for execution was subsequently made against his estate. The heirs of the judgment-debtor objected to the application; on the ground that the decree having been passed against their father alone, it could not be executed against the joint family estate, now their's by operation of Mitakshara law:—*Held* that, inasmuch as there was an attachment subsisting at the time of the application, the estate of the judgment-debtor under attachment at the time of his death was liable after his death, even though it had passed to the surviving members of the joint Mitakshara family. *Suraj Bunsi Koer* v. *Sheo Persad Singh*, I. L. R. 5 Calc. 148; L. R. 6 I. A. 88, relied on. *Karnataka Hanumantha* v. *Andukuri Hanumayya*, I. L. R. 5 Mad. 232, distinguished. BENI PERSHAD *v.* PARBATI KOER.

[I. L. R. 20 Calc. 895

17.—*Mitakshara law—Debts incurred by agent of joint family—Suit and decree against managing members of a joint family business—Effect of sale against other members though not parties to decree—Execution-proceedings, setting aside of.*] The plaintiffs, who were the members of a joint Hindu family, sought to recover a share in certain properties on the allegation that they were joint family properties, but wrongfully sold in execution of a decree upon a bond executed by their paternal uncles *L* and *S* and one *B S*. The family was a trading family, and carried on a money-lending business under the supervision of *L* and *S*. One *Z M* had dealings with *L* and *S*, and in the course of such dealings, he deposited a certain sum of money with them for which the above bond was executed in which certain properties belonging to the family were pledged as security. Subsequently *Z M* sued on this bond, obtained a decree, and put up the properties for sale, which were purchased by some of the defendants, who dispossessed the plaintiffs. The share of the properties advertised for sale, certified in the sale-certificates granted to the defendants to have passed to them, was the share of the whole family in the properties sold, but it was described as the right, title and interest of *L* and *S*, the persons sued:—*Held*, that *L* and *S*, though not the managers of the family, were yet its accredited agents in the management of the money-lending business, and as such had the authority of the other members to pledge the family properties for a joint-debt contracted in the ordinary course of that business. *Joburra Bibee* v *Sreegopal Misser*, I. L. R. 1 Calc. 470, referred to. *Held*, also, that the sale having been under a decree in respect of a joint-debt of the family, the whole interest of the family in the properties in dispute passed at the sale, although

HINDU LAW—JOINT FAMILY—*concld.*

(5) SALE OF JOINT-FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS—*concluded.*

L and *S* only out of the members of the family were sued. *Pursid Narain Sing* v. *Honooman Sahai*, I. L. R. 5 Calc. 845; *Bissessur Lall Sahoo* v. *Luchmessur Singh*, L. R. 6 I. A. 233: 5 C. L. R. 477; *Nanomi Babuasin* v. *Modhun Mohun*, I. L. R. 13 Calc. 21; *Daulut Ram* v. *Mehr Chand*, L. R. 14 I. A. 187: I. L. R. 15 Calc. 70; *Gaya Din* v. *Raj Bansi Knar*, I. L. R. 3 All. 191; *Ram Narain Lal* v. *Bhawani Prasad*, I. L. R. 3 All. 443; *Phul Chand* v. *Lachmi Chand*, I. L. R. 4 All. 486; *Bemola Dossee* v. *Mohun Dossee*, I. L. R. 5 Calc. 792; *Baso Kooer* v. *Hurry Dass*, I. L. R. 9 Calc. 495; *Samalbhai Nathubhai* v. *Someshvar*, I. L. R. 5 Bom. 38; and *Hari Vithal* v. *Jairam Vithal*, I. L. R. 14 Bom. 597, referred to. *Held* further, that in execution-proceedings the Courts will look at the substance of the transaction, and will not be disposed to set aside an execution upon mere technical grounds when they find it is substantially right. *Bissessur Lall Sahoo* v. *Luchmessur Singh*, L. R. 6 I. A. 233: 5 Calc. L. R. 477, followed. SHEO PERSHAD SINGH *v.* SAHEB LAL; RAJKUMAR LAL *v.* SAHEB LAL.

[I. L. R. 20 Calc. 453

HINDU LAW—MAINTENANCE. *Col.*

1. Form of Allowance and Calculation of Amount 456
2. Right to Maintenance 457
(*a*) General cases 457
(*b*) Brother's widow 457
(*c*) Widow 458
(*d*) Wife 460

See HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

[I. L. R. 16 Mad. 54

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW.

[I. L. R. 15 Bom. 234

See HINDU LAW—PARTITION—SHARES ON PARTITION—WIDOW.

[I. L. R. 20 Calc. 682

See HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

[I. L. R. 17 Calc. 674

(1) FORM OF ALLOWANCE AND CALCULATION OF AMOUNT.

1.—*Widow's maintenance—Withholding of maintenance—Demand and refusal—Arrears of maintenance—Limitation—Decree providing for reduction of maintenance in event of altered circumstances of persons paying it—Decree, form of.*] *K*, a Hindu widow, sued the undivided brothers of her deceased husband for maintenance She also claimed arrears of maintenance for six years prior to the institution of the suit. The Court of First Instance passed a decree in her favour

HINDU LAW—MAINTENANCE—*contd.*

(1) FORM OF ALLOWANCE AND CALCULATION OF AMOUNT—*concluded.*

awarding her maintenance at the rate of Rs. 52 a year during her lifetime, but "subject to variation according to the change in defendants' circumstances for the worse." The Court also awarded her arrears of maintenance for three years only (not six as claimed) on the ground that she was only twenty years old, and had always lived with her father and been maintained by him, and that a formal demand had only been made on the defendants three years previously. On appeal, the District Court increased the rate of maintenance to Rs. 65 per annum, and awarded the plaintiff arrears for six years, holding that the fact of the demand having been made only three years before suit did not prevent her from recovering arrears for six years:—*Held*, by the High Court, that although the withholding of maintenance, which constitued the cause of action, might be proved otherwise than by a demand and refusal, yet in this case it had not been shown that there were any circumstances which would amount to a refusal of maintenance. The decree of the lower Appeal Court was, therefore, confirmed, except so far as it gave the plaintiff arrears of maintenance for six years, which period was altered to three years. The clause as to the reduction of maintenance in the event of altered circumstances was also struck out. MOTILAL PRANNATH *v.* BAI KASHI.

[I. L. R. 17 Bom. 45

(2) RIGHT TO MAINTENANCE.

(*a*) GENERAL CASES.

2.—*Agreement by zemindar to maintain collateral relations—Construction of agreement—Charge on estate—Impartible zemindari.*] The holder of an impartible zemindari estate, in an agreement with the eldest son of his younger brother, settling family disputes, used words to this effect: "I have agreed to give you, through the Collector, every month Rs. 300, on account of the maintenance of yourself, your younger brothers, three in all, and the rest of your family." The son of the youngest brother now sued the son and successor of that zemindar for maintenance according to the agreement:—*Held*, that the payment was not limited to the life of one, or all, of the brothers, but that the issue of each of the three were included, and that maintenance at a proportionate rate had been rightly decreed to the plaintiff as a charge on the estate. LAKSHMI NARAYANA ANANGA GARU *v.* DURGA MADHAWA DEO GARU.

[I. L. R. 16 Mad. 268

[L. R. 20 I. A. 9

(*b*) BROTHER'S WIDOW.

3.—*Obligation of brothers to maintain widow of a brother who predeceased their father whose property they have inherited.*] The principle that an heir succeeding to property takes it for the spiritual benefit of the late proprietor, and is, therefore, under a legal obligation to maintain

HINDU LAW—MAINTENANCE—*contd.*

(2) RIGHT TO MAINTENANCE—*continued.*

(*b*) BROTHER'S WIDOW—*concluded.*

persons whom the late proprietor was morally bound to support, has ample basis in the Hindu law of the Bengal school. It is immaterial whether the property so inherited is moveable or immoveable. In each case it must be determined whether, having regard to the relationship, the means, and various other circumstances of the party claiming maintenance, the late proprietor was, according to the principles of the Hindu law and to the usages and practice of the Hindu people, morally bound to maintain that party. The above principle is applicable to the case of a widow claiming maintenance from her husband's brothers who had inherited her father-in-law's property, her own husband having predeceased his father. *Janki* v. *Nandram*, I. L. R. 11 All. 194, followed. Provided, therefore, that there is nothing to show that she was not a dependent member of her father-in-law's family, within the meaning of the rule of Hindu law enjoining a moral obligation on a person to maintain such members of his family, such a widow was entitled to maintenance. KAMINI DASSEE *v.* CHANDRA PODE MONDLE.

[I. L. R. 17 Calc. 373

(*c*) WIDOW.

4.—*Suit against father-in-law—Defence that plaintiff was provided for by her husband's will—Effect of direction in husband's will that widow should reside in family house.*] The plaintiff, after the death of her husband *A*, sued her father-in-law for maintenance. *A*, although not adopted had always been treated by his maternal grandfather *N* as his son. They lived together, and after *N's* death, in 1873, *A* and his wife (the plaintiff) continued to live occasionally with *N's* widow *M*. *A* died in 1876 without issue, leaving the plaintiff, his widow, who was then a minor of the age of fourteen. *A* left a will and appointed *M* his executrix. In his will he spoke of himself as the adopted son of *N* (which he was not), and he purported by it to dispose of *N's* property. He bequeathed ornaments of the value of Rs. 2,000 to his wife, and he directed that if she resided in the house of his father (the defendant), or in the house of *M*, she should be paid Rs. 10 a month as maintenance by *M*; but if she went to live elsewhere, that only Rs. 7 a month should be paid to her. *M* proved the will. In 1879 the plaintiff left *M's* house and went to live with her mother; and in 1889 she filed this suit against her father-in-law, the defendant, for maintenance. The defendant pleaded that the plaintiff was provided for by her husband's will, and, further, that the plaintiff had failed to obey her husband's direction to reside either in *M's* house or the defendant's house, and that, therefore, she was not entitled to a separate maintenance:—*Held*, that the plaintiff was not bound to enforce her claim under her husband's will in lieu of claiming maintenance from her father-in-law. In answer to plaintiff's claim the defendant was bound to show that she was possessed of property out of which she could

HINDU LAW—MAINTENANCE—*contd.*

(2) RIGHT TO MAINTENANCE—*continued.*

(*c*) WIDOW—*continued.*

maintain herself, and he did not discharge that *onus* by showing that by suing *M* she might possibly recover the maintenance provided for her by the will. *Held*, also, that the plaintiff was entitled to separate maintenance from the defendant. The general rule of law is that a Hindu widow is not bound to reside in her deceased husband's family house and does not forfeit her right to maintenance out of her husband's estate by going to reside elsewhere, unless she goes elsewhere for an improper purpose. *Quære*—whether that rule applies if she goes to reside elsewhere notwithstanding a direction in her husband's will that she should reside in the family house. GOKIBAI *v.* LAKHMIDAS KHIMJI.

[I. L. R. 14 Bom. 490

5.—*Residence in family house directed by husband.*] A Hindu widow, whose husband has directed that she shall be maintained in the family house, is not entitled to maintenance if she reside elsewhere without cause. GIRIANNA MURKUNDI NAIK *v.* HONAMA.

[I. L. R. 15 Bom. 236

6.—*Calculation of amount of maintenance.*] In estimating the amount of maintenance which should be allowed to a Hindu widow out of her husband's estate, regard should be had to the value of the estate as gauged by the annual income derivable therefrom, to the position and status of the deceased, and to the position and status of the widow, and the expenses involved by the religious and other duties which she has to discharge. *Nitto Kissoree Dossee* v. *Jogendro Nath Mullick* L. R. 5 I. A. 55, and *Narhar Singh* v. *Dirgnath Kuar*, I. L. R. 2 All. 407, referred to. *Per* MAHMOOD, J:—The amount of maintenance should not be determined with reference to the principle that the life of a Hindu widow should be of a peculiarly ascetic character, and that she should have only a "starving allowance." The austerities enjoined upon Hindu widows are matters not of legal obligation, but only of moral injunction, and cannot be enforced by Courts of justice. The Courts should bear in mind that Hindu widows are by ancient custom debarred from re-marriage, and should fix the maintenance at a sum sufficient to obviate the danger of the widow being driven to immorality. BAISNI *v.* RUP SINGH.

[I. L. R. 12 All. 558

7.—*Suit on a consent-decree to recover arrears of maintenance—Unchastity of widow—Starving maintenance.*] A decree obtained by a Hindu widow declaring her right to maintenance is liable to be set aside or suspended in its operation on proof of subsequent unchastity given by the husband's relatives, either in a suit brought by them expressly for the purpose of setting aside the decree or in answer to the widow's suit to enforce her right. Upon proof of such subsequent unchastity the widow is entitled to no maintenance whatever. *Bishnu Shambhog* v. *Manjamma*, I. L. R. 9 Bom. 108, and *Rama Nath* v. *Rajonimoni Dasi*, I. L. R. 17 Calc. 674, approved. DAULTA KUARI *v.* MEGHU TIWARI.

[I. L. R. 15 All. 382

HINDU LAW—MAINTENANCE—*concld.*

(2) RIGHT TO MAINTENANCE—*concluded.*

(*c*) WIDOW—*concluded.*

(*d*) WIFE.

8.—*Wife leaving her husband's protection—Cruelty of husband.*] A Hindu wife is justified in leaving her husband's protection, and is entitled to separate maintenance from his income, when he habitually treats her with cruelty and such violence as to create the most serious apprehension for her personal safety. *Sitanath Mookerjee* v. *Hamiabutty Dabee*, 24 W. R. 377, referred to. MATANGINI DASI *v.* JOGENDRA CHUNDER MULLICK.

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[I. L. R. 19 Calc. 289

See JURISDICTION OF CIVIL COURT—CASTE.

[I. L. R. 13 Mad. 293

(1) VALIDITY OR OTHERWISE OF MARRIAGE.

1.—*Illegitimacy of parties to marriage—Convert to Mahomedanism—Apostate.*] *R*, originally a Hindu woman and the illegitimate offspring of Chattri parents, was duly married according to the Hindu rites to *D*, who was also by caste a Chattri. After the marriage *R* became a convert to Mahomedanism:—*Held*, that illegitimacy is, under the Hindu law, no absolute disqualification for marriage, and that when one or both the contracting parties to a marriage are illegitimate, the marriage must be regarded as valid, if they are recognized by their caste people as belonging to the same caste. *Held* also that there is no authority in Hindu law for the proposition that an apostate is absolved from all civil obligations, and that so far as the matrimonial bond is concerned such a view would be contrary to the spirit of that law which regards it as indissoluble, and that accordingly the marriage between *R* and *D* was not under the Hindu law dissolved by her conversion to Mahomedanism. *Rahmed Beebee* v. *Roheya Beebee*, 1 Norton's L. C on Hindu Law 12, dissented from. IN THE MATTER OF RAM KUMARI.

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HINDU LAW—MARRIAGE—*continued.*

(1) VALIDITY OR OTHERWISE OF MARRIAGE—*continued.*

2.—*Brahman bride given in marriage by her mother without her father's consent—Injunction.*] A Vaishnava Brahman girl was given to the plaintiff in marriage by her mother without the consent of her father, who subsequently repudiated the marriage. It appeared that the mother falsely informed the Brahman, who solemnized the marriage, that the father had consented to it:—*Held*, that the plaintiff was entitled to a declaration that the marriage was valid and to an injunction restraining the parents from marrying the bride to any one else. VENKATACHARYULU *v.* RANGACHARYULU.

[I. L. R. 14 Mad. 316

3.—*Conditional marriage—Restitution of conjugal rights—Husband and wife—Kudwa Kunbi caste—Custom—Public policy.*] The plaintiff, a member of the *Kudwa Kunbi* caste, sued in 1890 for restitution of conjugal rights, alleging that he had been married to the first defendant in 1927 (1870). The defendants alleged that at the date of the marriage the parties were only a month old; that the marriage was a *sata* (exchange) marriage, and that by the contract the plaintiff's father was bound, as a condition of his obtaining the second defendant's daughter for his son, to provide a girl to be married to the second defendant's son. They alleged that such conditional marriages were a custom of the caste, and they denied that the condition had been performed by the plaintiff's father. They further alleged that in 1936 (1879) the plaintiff's father finding that he could not perform the condition had passed a release (the plaintiff himself then being a minor) to defendant No. 2 (the father of defendant No. 1) giving up all claims to defendant No. 1; that a dispute having subsequently arisen after the plaintiff had attained his majority the matter was referred to the members of the caste, who decided that within a certain fixed time the plaintiff should provide a girl for the son of defendant No. 2, and that on the plaintiff failing to do so the marriage was dissolved. The Court found that by the custom of the caste the marriage in 1927 (1870) between the plaintiff and defendant No. 1 was only a conditional marriage; that the release of 1936 (1879) operated to cancel the marriage, and that in any case the plaintiff's failure to find a girl for the second defendant's son, in accordance with the decision of the caste, dissolved the marriage:—*Held*, that the plaintiff had not established his right to the restitution of defendant No. 1 as his wife. The alleged custom was not contrary to public policy. According to the custom relied on, there was no complete and binding marriage within the intention of the parents of the parties, although the ordinary religious ceremonies were performed. Such a transaction could not be regarded as immoral from any point of view. The Hindu law leaves it entirely to the parents to marry their daughters, and although, according to the strict Brahmanical law, a marriage is complete when the religious ceremony has been performed, there would seem to be no sufficient

HINDU LAW—MARRIAGE—*concluded.*

(1) VALIDITY OR OTHERWISE OF MARRIAGE—*continued.*

reason for refusing to recognise a custom, at any rate, among the lower castes, by which such transactions, rendered necessary by the paucity of women in the caste, although performed with religious ceremonies, are still regarded by the parents on both sides as incomplete and conditional marriages. BAI UGRI *v.* PATEL PURSHOTTAM BHUDAR.

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[I. L. R. 17 Calc. 886

(1) REQUISITES FOR PARTITION.

1.—*Evidence of partition — Distribution of family estate followed by separate possession, equivalent to informal partition.*] The Courts below found that a distribution of ancestral estate among the members of a family had taken place in former years, and had been followed by continuous possession, without their having any intention to re-adjust or to hold on behalf of the family. The right of an individual member to claim another partition was therefore negatived. The parties, who had long discontinued joint residence, were members of a family consisting at the time of the distribution of four sons left by a Sikh Dewan, deceased. The son of one brother now claimed from the son of another, joining a third who still survived, partition of the property which had descended from the grandfather, with the increment since his time. That an actual partition had been effected, although probably no formal document of partition had been executed, appeared to their Lordships to be a just inference from the evidence. BUDHA MAL *v.* BHAGWAN DAS.

[I. L. R. 18 Calc. 302

2.—*Evidence of partition—Arrangements for separate enjoyment.*] A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons, and died. The plaintiff, a female, the sole surviving member of the testator's

HINDU LAW—PARTITION—*continued.*

(1) REQUISITES FOR PARTITION—*concluded.*

family, sued to recover so much of the property as she might be entitled to. In deciding what was the extent of the property which the plaintiff was entitled to inherit, certain documents adduced as evidencing partition of the family property were held to evidence merely arrangements for separate enjoyment. SANKU *v.* PUTTAMMA.

[I. L. R. 14 Mad. 289

3.—*Evidence of partition—Separate enjoyment of portions of family property for several years—Entries in survey records—Dealings with portions of property—Sole enjoyment of a certain property by a branch of the family—Separate acquisition.*] In a partition suit it being found that the several branches of a Hindu family had lived separate for forty or fifty years, had enjoyed during that period separate and distinct portions of the family property or portions of the property in regular rotation, and had dealt with the separate portions in every respect as their own property, and that in the survey records the lands were entered in the names of the several branches in respect of their separate shares:—*Held*, that this evidence as to the mode of enjoyment by the several branches of a family during so long a period ought to be taken as establishing a tacit agreement of enjoyment according to their shares. There being no evidence on the record to show when and by what member of the family certain property in the possession of a particular branch of the family was acquired, and the entry in the survey records with respect to it being different from that of the ancestral fields, that is, the entry being in the name of the representative of that particular branch with no sub-division of shares, and the party seeking partition of such property having failed to give evidence to rebut the presumption arising from the sole enjoyment of the particular branch and the entry in the survey records. *Held*, that such property was the separate acquisition of that particular branch. *Moro* v. *Ganesh*, 10 Bom. 444; *Appoovier* v. *Rama Subba Aiyan*, 11 Moo I. A. 75; and *Bannoo* v. *Kashee Ram*, I. L. R. 3 Calc. 315, referred to. MURARI VITHOJI *v.* MUKUND SHIVAJI NAIK.

[I. L. R. 15 Bom. 201

(2) PROPERTY LIABLE OR NOT TO PARTITION.

4.—*Saranjam—Impartibility—Descent of saranjam.*] A *saranjam* is ordinarily impartible, and descends entire to the eldest representative of the past holder. NARAYAN JAGANNATH DIKSHIT *v.* VASUDEO VISHNU DIKSHIT.

[I. L. R. 15 Bom. 247

5.—*Saranjam—Cash allowances payable from the Government treasury—Impartibility—Custom of the family as to partibility—Senior member of the family—Right of eldership—Amount set apart for the celebration of a festival—Separate celebration of the festival after division—Expenses of the separate celebration—Expenses of collecting the*

HINDU LAW—PARTITION—*continued.*

(2) PROPERTY LIABLE OR NOT TO PARTITION—*concluded.*

saranjam and pension incomes—Omission of the lower Court to pass a decree for partition among all the co-sharers—Decree for partition among the co-sharers passed in appeal.] *Saranjams* are *primâ facie* impartible, the holders being required to make a suitable provision for their younger brothers. Where, however, it appeared that the members of a family had treated *saranjams* as partible, and had dealt with them as such in effecting partitions of the entire family estate, which consisted both of incomes and *saranjams*:—*Held*, that the Court was justified in concluding that the *saranjams* were either originally partible or had become so by family usage. The plaintiff, an undivided member of a Hindu family, sued his co-sharers for division of *saranjam* and other family property. The defendant No. 1 contended that the *saranjam* was impartible. In any case he claimed to retain certain sums in his capacity as the eldest representative of the family for the performance of certain offices. *Held*, that the parties having effected division of the *saranjams* on previous occasions, the *saranjams* were either originally partible or had become so by family usage. *Held*, further, that the right of *radilki* (eldership) never having lost its original character of impartibility, it was impartible and transmissible to the eldest representative of the family. Where in a suit for partition a certain sum was claimed by the eldest representative of the family for the purpose of celebrating a certain festival:—*Held*, that the branches of the family being completely separated, each branch would celebrate the festival apart and would necessarily require funds for its separate celebration, and that, therefore, the sum claimed by the eldest representative for the celebration of the festival could not be left undivided. The Court of First Instance having omitted to decree the shares of the defendants other than defendant No. 1, who demanded partition, their shares were declared and allowed in appeal. *Ramchandra* v. *Venkatrav*, I. L. R. 6 Bom. 598, and *Bhujangrav* v. *Malojirav*, 5 Bom. A. C. 161, referred to. MADHAVRAV MANOHAR *v.* ATMARAM KESHAV.

[I. L. R. 15 Bom. 519

6.—*Sheri lands—Lease by Government for term of years.*] The general Hindu law as to partition, which lays down that, except in certain special cases determined by family custom or usage, partition of all family property can be made, is equally applicable to *sheri* lands leased by Government for a certain number of years; there is no Act of Legislature which excludes lands leased by Government from its operation. DATTRATRAYA VITHAL *v.* MAHADAJI PARASHRAM.

[I. L. R. 16 Bom. 528

(3) PARTITION OF PORTION OF PROPERTY.

7.—*Partition of part of family property—Suit for ejectment—Right of suit—Parties.*] A Hindu sued for possession of a one-third part of a house, a portion of his family property. Defendant No. 1

HINDU LAW—PARTITION—*continued.*

(3) PARTITION OF PORTION OF PROPERTY —*concluded.*

claimed title from the purchaser at a Court-sale held in execution of a decree against the plaintiff's father; the other defendants were undivided brothers of the plaintiff. The title claimed by defendant No. 1 was supported by the other defendants, but the plaintiff alleged that the purchase at the Court-sale had been made *benami* for him:—*Held*, that the suit was not maintainable, being a suit for partition of a specific item of the family property, but that the plaintiff might sue to eject defendant No. 1, joining his own brothers as defendants. VENKAYYA *v.* LAKSHMAYYA.

[I. L. R. 16 Mad. 98

(4) RIGHT TO ACCOUNT ON PARTITION.

8.—*Liability of manager to account on occasion of partition—Right of members who were minors at time of management to an account from manager—Manager also guardian of minors—Nature of account to be rendered by a manager on partition—Family idol and property appertaining thereto—Right of mother to a share of estate on partition.*] A manager of a Hindu family cannot refuse to render any account whatever of his management on the occasion of a partition, or require the other members of the family to accept his *ipse dixit* as to the property subject to partition. What that account should be so as to discharge him from his liability to account as manager, and what objections the other members of the family can take to it, must depend on the conduct of the manager and the other members of the family, the nature of the property, and the circumstances of the family, and cannot be stated in definite terms. Members who were minors during the management cannot be taken to have consented to the management, and are entitled, when they attain their majority, to hold the manager liable not only for acts amounting to fraud, but also where the management has been grossly negligent and prejudicial to their interests; the presumption, however, being that, in the absence of evidence, the property for partition is such as it exists at the time of the suit for partition. A brother sued his three brothers for partition of their father's estate, which consisted of moveables and immoveables and a banking business. As senior member of the family he also claimed the *rajseva* (family idol) and the property appertaining to it. The mother (*K*) of the first three defendants and *M*, the widow of a deceased brother of the plaintiff, and *N*, his aunt, the widow of his father's brother, were also defendants to the suit. The three brothers (defendant Nos. 1, 2 and 3) alleged that their father had died in 1864 at which time they were minors; that the plaintiff had managed the estate ever since and had, in 1865, obtained a certificate of guardianship and administration to their estate under Act XX of 1864; that the plaintiff's management had been fraudulent, improper and wasteful, and prejudicial to their interests as minors, and they contended that they were entitled to an account from him of the property at the date of their father's death and of

HINDU LAW—PARTITION—*continued.*

(4) RIGHT TO ACCOUNT ON PARTITION —*concluded.*

the proceeds, income, and profits from that date to the date of suit. They contended that, as the plaintiff had been appointed administrator of their estate under Act XX of 1864, he was liable to account to them as a trustee, and was bound to show that all sales, purchases and other transactions entered into by him were necessary and for their benefit. The lower Court held that the family being united, the Minors Act did not apply, and that the fact that the plaintiff had obtained a certificate of guardianship did not enlarge his liability to account, and that, on the authorities, the manager of a Hindu family was not bound to account for past transactions, nor for mesne profits, unless in cases of fraud or gross extravagance, and that the state of the family property as it existed at the time of partition was to be the basis of the distribution. On appeal to the High Court:—*Held*, that the defendants were entitled to an account from the plaintiff, and that it was open to them to raise objections with regard to the plaintiff's management. *Held*, also, as to the nature of the account which the plaintiff should render of past transactions, that, having regard to the circumstances of the family and the nature of the family property, the plaintiff, in producing the books of the firm since the father's death, which contained an account of all transactions relating to the firm's property and of the moveable and immoveable property, had done all that he could be expected to do, whether as the family manager or as certificated administrator of the defendants' interests in the family property. *Held*, also, that the circumstance that the plaintiff had obtained a certificate of administration of the estate of the minors, and sold their interests in certain houses, without the consent of the Court, could not give them a counter claim against the plaintiff, unless they proved that they had been prejudiced by the sale. As to ornaments purchased since the death of the father, it was directed that they should be brought into hotchpot by all the parties in making the partition. As to remissions of tenants' rent and compromises of suits, although a considerable loss was shown to have resulted from them, it was held that the defendants had failed to show that they were improper or uncalled for, and there was no evidence to make the plaintiff himself liable for them, or to forbid their being transferred to the general account. The losses in trade also were properly debited to the general business of the firm, and the plaintiff was not personally liable for them. *Held*, also, that the plaintiff was entitled to take the *rajseva* (family idol) and keep it with the property appertaining thereto as the family idol and the property thereof, with liberty to such members of the family as are or shall become *marjadas* to have access to it for the purpose of worship. *Held*, also, that *K*, the mother of the first three defendants (step-mother of the plaintiff), was entitled on this partition to a one-fifth share in the estate. DAMODARDAS MANEKLAL *v.* UTTAMRAM MANEKLAL.

[I. L. R. 17 Bom. 271

HINDU LAW—PARTITION—*continued.*

(5) RIGHT TO PARTITION.

(*a*) PURCHASER FROM CO-PARCENER.

9.—*Sale by a co-parcener of his share in specific property—Rights of the vendee—Transfer of Property Act, s.* 44.] A purchaser from a member of an undivided Hindu family of that member's share in a specific portion of the ancestral family property cannot sue for a partition of that portion alone and obtain an allotment to himself by metes and bounds of his vendor's share in that portion of the property. VENKATARAMA *v.* MEERA LABAI.

[I. L. R. 13 Mad. 275

See CHANDU *v.* KUNHAMED, distinguished on the ground that the parties there were governed by the Mahomedan law of inheritance.

[I. L. R. 14 Mad. 324

10.—*Purchaser from member of undivided Hindu family of share in the joint property.*] Two brothers constituted an undivided Hindu family. The eldest mortgaged half of certain family lands to *P* and the other half to the father (since deceased) of the contending defendants, and placed the mortgagees respectively in possession. Neither mortgage was binding on the younger brother who mortgaged his share of the same land to the plaintiff. The plaintiff obtained a decree on his mortgage and attached and brought to sale in execution and himself purchased the half share of his mortgagor, and having afterwards purchased the share of the elder brother and come to a settlement with *P*, brought a suit for a moiety of the land in the possession of the contending defendants as forming part of the half share of his mortgagor:—*Held*, that the contest being between strangers to the family, and the plaintiff having purchased the entire rights of the family in the land in question, the suit was maintainable without a claim for partition of the whole property of the family. SUBBARAZU *v.* VENKATARATNAM.

[I. L. R. 15 Mad. 234

11.—*Claim against vendor and widow of undivided brother.*] A person who purchases the share of a co-parcener in family property is entitled to recover that share on his vendor's succession to the property as against the vendor himself and the widow of his undivided brother. *Udaram Sitaram* v. *Ranu Fanduji*, 11 Bom. 76, distinguished. MANJAPPA HEGADE *v.* LAKSHMI.

[I. L. R. 15 Bom. 234

(*b*) SON.

12.—*Suit for partition by a son against his father and uncles in lifetime of his father and against his father's will.*] *Held*, by the Full Bench (TELANG, J., dissenting) that under the Hindu law applicable to the Satara District (in the Presidency of Bombay) a son cannot in the lifetime of his father sue his father and uncles for a partition of the immoveable family property and for possession of his share therein, the father not assenting thereto. APAJI NARHAR KULKARNI *v.* RAMCHANDRA RAVJI KULKARNI.

[I. L. R. 16 Bom. 29

HINDU LAW—PARTITION—*continued.*

(5) RIGHT TO PARTITION—*concluded.*

(*c*) WIDOW.

13.—*Co-widows of estate left by their deceased husband.*] Possession of the estate left by their deceased husband was taken by two widows of a deceased Hindu, who, being childless, had before his death adopted a son, to whom, also, by will, he bequeathed his estate. The adopted son died soon after the testator:—*Held*, that the widows had a possessory title or interest in the estate, notwithstanding that a preferable title might exist in others through the deceased legatee; also, that the estate, being jointly held by them, was partible, and either widow might maintain a suit for partition. SUNDAR *v.* PARBATI.

[I. L. R. 12 All. 51

[L. R. 16 I. A. 186

(6) SHARES ON PARTITION.

(*a*) MOTHER.

14.—*Step-mother—Partition between brothers.*] In a suit for partition between brothers and half-brothers, the mother of the first three defendants (step-mother of the plaintiff), was held to be entitled on the partition to a one-fifth share in the estate. DAMODARDAS MANEKLAL *v.* UTTAMRAM MANEKLAL.

[I. L. R. 17 Bom. 271

(*b*) PURCHASERS.

15.—*Suit by the purchaser of an undivided share of family property—Time when the share is ascertained.*] The purchaser from a member of a joint Hindu family of his share of a house which belonged to the family, sued for the partition and delivery of possession of the share purchased by him. The number of persons entitled as co-parceners to the property of the family had increased between the date of the purchase and that of the suit. It did not appear whether the house constituted the whole or only part of the property of the family, and no question was raised as to the competency of the plaintiff to sue for a partial partition:—*Held*, by the Full Bench, that the share to be awarded to the plaintiff should be computed with reference to the state of the joint family at the date of the suit. *Held* by the Divisional Bench, that the decree appealed against, by which the plaintiff was to recover the value of the share of the house computed as above and not the share itself, was right. RANGASAMI *v.* KRISHNAYYAN.

[I. L. R. 14 Mad. 408

(*c*) WIDOW.

16.—*Bengal school of law—Partition of one item of joint family property by outside shareholder—Widow's share on such partition in lieu of maintenance.*] The right of a widow (a member of a joint Hindu family) to a share in lieu of maintenance only arises when there is a partition of the joint family estate in the sense that it ceases to exist as a joint estate. Hence upon a partition enforced by a stranger in respect of property which forms merely one item of the

HINDU LAW—PARTITION—*concluded.*

(6) SHARES ON PARTITION—*concluded.*

(*c*) WIDOW—*concluded.*

joint estate, the widow is not entitled to such share, if, notwithstanding such division, the main estate remains undivided:—*Held*, upon the facts of this case, that the widow was not entitled to such share. BARAHI DEBI *v.* DEBKAMINI DEBI.

[I. L. R. 20 Calc. 682

HINDU LAW—REVERSIONERS. *Col.*

1. Powers of Reversioners to restrain Waste and set aside Alienations 469
2. Surrender by Widow to Reversioner 470
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See HINDU LAW—WIDOW—POWER OF WIDOW—POWER OF DISPOSITION OR ALIENATION.

[I. L. R. 14 All. 377

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 14 Bom. 512

See LIMITATION ACT, 1877, ART. 141.

[I. L. R. 14 Mad. 512

[I. L. R. 14 Bom. 317

[I. L. R. 21 Calc. 8

(1) POWERS OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.

1.—*Suit in lifetime of daughter of last male owner—Suit by reversioner to estabish invalidity of a sale by a widow—Daughter of last male holder not joined.*] Under the Hindu law obtaining in the Madras Presidency a reversioner is entitled to sue to establish the invalidity of a sale by the widow of the last male holder, notwithstanding the fact that he left a daughter, who was alive at the date of suit, but was not joined as a party. RAGHUPATI *v.* TIRUMALAI.

[I. L. R. 15 Mad. 422

2.—*Next presumptive reversioner — Intervening woman's estate.*] The plaintiff's grandson (daughter's son), of a deceased Hindu, sued during the lifetime of his mother to set aside a will made by his mother's father in favour of an idol under the management of his step-mother, the testator's second wife:—*Held* that, there being no evidence of collusion or contrivance, the plaintiff not being the next reversioner, was not competent to maintain the suit. The fact that his mother's estate, should it ever come into her possession, would be only a limited estate, would not affect the plaintiff's subsisting position in respect of his right to sue. *Madari* v. *Malki*, I. L. R. 6 All. 428, followed. ISHWAR NARAIN *v.* JANKI.

[I. L. R. 15 All. 132

HINDU LAW—REVERSIONERS—*concld.*

(2) SURRENDER BY WIDOW TO REVERSIONER.

3.—*Acceleration of succession by Hindu widow—Surrender of life-estate by widow to heir.*] A Hindu widow can accelerate the succession of the heir by conveying absolutely her life-estate to him, but it is essential that she should surrender her estate, so that the whole estate should become at once vested. A Hindu widow executed an *ikrarnama* in favour of her daughter's son, then apparently the heir who would ultimately succeed, but adding that she would retain possession for her own life:—*Held*, that this could not operate to exclude the daughter, nor after her the son of another (deceased) daughter, not born at the date of its execution. BEHARI LAL *v.* MADHO LAL AHIR GAYAWAL.

[I. L. R. 19 Calc. 236

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(3) CONVEYANCE BY WIDOW WITH REVERSIONER'S CONSENT.

4.—*Alienation by Hindu widow of a portion of her estate with consent of some of the reversioners—Suit by other reversioners to set aside alienation.*] The principle enunciated by the Full Bench in the case of *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy*, I. L. R. 10 Calc. 1102, is not applicable to a case where some only of the reversioners have consented to an alienation by the widow, and where therefore only a portion of the widow's estate has been alienated. RADHA SHYAM SIRCAR *v.* JOY RAM SENAPATI.

[I. L. R. 17 Calc. 896

SRISTIDHUR CHURAMONI BHUTTACHARJEE *v.* BROJO MOHUN BIDDYARUTON BHUTTACHARJEE.

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HINDU LAW—STRIDHAN. *Col.*

1. Description and Devolution of Stridhan 470

(1) DESCRIPTION AND DEVOLUTION OF STRIDHAN.

1.—*Stridhan inherited by daughter from mother—Preferential heirs on death of daughter.*] *Stridhan* inherited by a daughter from her mother passes on the daughter's death to the person who would be the next heir to the mother's *stridhan*. Where *B* inherited *stridhan* from *A*, her mother, it was held to pass on the death of *B* to the sons of *A* in preference to the children of *B*. HURI DOYAL SINGH SARMANA *v.* GRISH CHUNDER MUKERJEE.

[I. L. R. 17 Calc. 911

2.—*Bengal school of law— Widowed daughter with dumb son—Daughter's son—Disqualification for inheritance.*] Under the Bengal school of the Hindu law a widowed daughter having a son who is dumb at the time the succession opens out (but is not shown to be incurably dumb) is entitled to

HINDU LAW—STRIDHAN—*continued.*

(1) DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued.*

succeed to her mother's *stridhan* in preference to a daughter's son. CHARU CHUNDER PAL *v.* NOBO SUNDERI DASI.

[I. L. R. 18 Calc. 327

3.—*Inheritance to stridhanam—Right of step-son to inherit.*] A Hindu widow having *stridhanam* acquired from her husband, died leaving no issue. The defendant, who was the son of her elder sister, took possession. The step-son of the deceased now sued to recover the *stridhanam* property. It was found that the marriage of the deceased had been celebrated in the *Brahma* form:—*Held*, that the plaintiff was entitled to succeed. BRAHMAPPA *v.* PAPANNA.

[I. L. R. 13 Mad. 138

4.—*Succession of daughter to property of mother—Daughters as heirs to exclusion of sons—Mitakshara law—Mayukha law—Ratnagiri District.*] According to the Mitakshara (which and not the Mayukha is the paramount authority in the Ratnagiri District) the daughter, as to property inherited from her mother, takes an absolute estate which classes as her *stridhan* and descends to her own heirs, *i.e.*, to her daughters to the exclusion of her sons. JANKIBAI *v.* SUNDRA.

[I. L. R. 14 Bom. 612

5.—*Moveable property inherited by a widow from her husband—Devolution of such property on the widow's death.*] Moveable property inherited by a Hindu widow, if not disposed of by her, passes, on her death, to the next heirs of her husband, whether such property be regarded as her *stridhan* or not. HARILAL HARJIVANDAS *v.* PRANVALAVDAS PARBHUDAS.

[I. L. R. 16 Bom. 229

See BAI JAMNA *v.* BHAISHANKAR.

[I. L. R. 16 Bom. 233

and GODHADHAR BHAT *v.* CHANDRABHAGABAI.

[I. L. R. 17 Bom. 690

6.—*Devolution of stridhan belonging to a childless widow—Grandson—Co-widow—Husband's nephew—Sapindas.*] A childless Hindu widow died, possessed of *stridhan* consisting of ornaments given to her on her marriage and of a house purchased by her out of her own separate income. She left her surviving (1) a co-widow; (2) the plaintiff, who was grandson of another co-widow; and (3) a nephew (*i.e.*, brother's son) of her husband. She had been married in one of the approved forms:—*Held*, that the plaintiff was a nearer *sapinda* of the deceased than either her co-widow or her husband's nephew, and, as such, excluded both from inheriting the deceased's *stridhan*. GOJABAI *v.* SHAHAJIRAO MALOJI RAJE BHOSLE.

[I. L. R. 17 Bom. 114

HINDU LAW—STRIDHAN—*continued.*

(1) DESCRIPTION AND DEVOLUTION OF STRIDHAN—*continued.*

7.—*Mithila law—Succession.*] The husband's sister's sons are preferential heirs to the husband's paternal great-grandfather's great-grandsons in the succession to *stridhan* property. MOHUN PERSHAD NARAIN SINGH *v.* KISHEN KISHORE NARAIN SINGH.

[I. L. R. 21 Calc. 344

8.—*Woman's estate apart from stridhan—Devolution of, according to Mayukha—Property inherited by a woman from a male owner—Property not of the class called "stridhan proper"—Reversion on her death to heir of last male owner not to be extended to stridhan.*] In cases to which the Vyavahara Mayukha is applicable, a woman's daughter and not her husband is the heir to her property, although not of the kind belonging to the class of "*stridhan* proper." The doctrine that property which has been inherited by a woman should revert on her death to the heirs of the last male owner is not to be extended to the devolution of *stridhan*. The heirs to succeed are the heirs to the woman herself, though her heirs in the husband's family. The phrase "sons and the rest" in Chapter IV, s. 10, placitum 26 of the Mayukha, means merely "sons, grandsons and great-grandsons," and the phrase "daughters and the rest" in placita 14, 23 and 24 means "daughters and their issue" as contrasted with "sons, grandsons and great-grandsons." As regards property which does not class as woman's property in the technical sense, the "sons and the rest" take precedence over the "daughter and the rest." Failing both sons and daughters the heirs to "*stridhan* proper" and "*stridhan* improper" are identical, save that as between male and female offspring the latter have a preferential right as regards "*stridhan* proper," while the former have a similar right as to "*stridhan* improper." The author of the Mayukha, like the author of the Mitakshara, does not regard the enumeration of specific kinds of *stridhan* in the old Smriti texts as exhaustive. He includes under the name all that by law becomes the property of the woman, only (unlike the author of the Mitakshara) he distinguishes the specific kinds enumerated in the texts from those which are not so enumerated for purposes of inheritance. In doing this it seems quite reasonable to lay down that, as regards that class of property which is emphatically woman's property being expressly so named by the old sages, the female offspring should take precedence over the male; while as regards that which is not such, the general preference given to male offspring over female by Hindu law should have effect. On the other hand there is no obvious reason why in the case of collateral relations any similar distinction should be maintained between the two classes. Under the rule of succession above stated, the woman is recognised as a fresh source of devolution. It is to be remembered that the property with which the rule in question deals, is not merely that which the woman obtains by inheritance, but may include that which has never belonged to her husband or any other

HINDU LAW—STRIDHAN—*concluded.*

(1) DESCRIPTION AND DEVOLUTION OF STRIDHAN—*concluded.*

relation, either on the husband's or the father's side, but is her own original acquisition. Such property is the woman's property; it is not the husband's property. Why, then, should it go on her death to any one except to those who are the woman's heirs, and how can the rule about the last male owner be made applicable to such property at all? MANILAL REWADAT *v.* BAI REWA.

[I. L. R. 17 Bom. 758

HINDU LAW—USURY.

1.—*Interest—Rule of dám dupat—Mortgage.*] The rule of *dám dupat* applies to mortgages where no account of the rents and profits has to be taken. BALKRISHNA BABAJI *v.* HARI GOVIND.

[I. L. R. 15 Bom. 84

2.—*Interest—Rule of dám dupat—Mortgage.*] A mortgagee is entitled to have interest added to the principal at the rate stipulated in the mortgage-deed, and to appropriate the rents and profits received by him in or towards satisfaction of such interest, but after such appropriation, if the amount of interest due on the mortgage exceeds the amount of principal, then, according to the rule of *dám dupat*, the mortgagee's claim must be limited to double the principal amount. *Nathubhai Panachand* v. *Mulchand Hirachand*, 5 Bom. A. C. 196, explained. GANESH DHARNIDHAR MAHARAJDEV *v.* KESHAVRAV GOVIND KULGAVKAR.

[I. L. R. 15 Bom. 625

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[I. L. R. 13 Mad. 214
[I. L. R. 17 Calc. 518
[I. L. R. 18 Calc. 69
[I. L. R. 15 Bom. 110, 565
[I. L. R. 16 Mad. 182

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

See HINDU LAW — FAMILY DWELLING-HOUSE.

[I. L. R. 17 Bom. 398

See HINDU LAW — INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.

[I. L. R. 19 Calc. 289

HINDU LAW—WIDOW—*continued.*

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

[I. L. R. 14 Bom. 490
[I. L. R. 15 Bom. 236

See HINDU LAW—REVERSIONERS—CONVEYANCE BY WIDOW WITH REVERSIONER'S CONSENT.

[I. L. R. 17 Calc. 896, 900 note

See HINDU LAW—WILL—CONSTRUCTION—ADOPTION.

[I. L. R. 19 Calc. 513
[I. L. R. 14 Mad. 65
[I. L. R. 16 Mad. 355
[I. L. R. 17 Calc. 122

See HINDU LAW—WILL—CONSTRUCTION—BEQUEST TO WIDOW.

[I. L. R. 14 Mad. 274

See HINDU LAW—WILL—CONSTRUCTION—ELECTION, DOCTRINE OF.

[I. L. R. 14 Bom. 438

See HINDU LAW—WILL—POWER OF DISPOSITION.

[I. L. R. 17 Calc. 886

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 14 Bom. 512

See LIMITATION ACT, 1877, ART. 141.

[I. L. R. 14 Bom. 317, 482
[I. L. R. 14 All. 156
[I. L. R. 21 Calc. 8

(1) INTEREST IN ESTATE OF HUSBAND.

(*a*) BY INHERITANCE.

1.—*Widow's estate in moveables inherited from her husband—Liability of such property for her debts after her death.*] Under the Hindu law in force in the Presidency of Bombay, a widow inheriting from her husband, or a mother from her son, may have an absolute power of disposal over moveable property so inherited; but any undisposed of residue of such property reverts on her death to the estate of the last male holder, and passes as his property to his heirs. It is not, therefore, her personal property liable in their hands for her debts. BAI JAMNA *v.* BHAISHANKAR.

[I. L. R. 16 Bom. 233

See HARILAL HARJIVANDAS *v.* PRANVALAVDAS PARBHUDAS.

[I. L. R. 16 Bom. 229

2.—*Possession of, and partition between, co-widows of estate left by their deceased husband.*] Possession of the estate left by their deceased husband was taken by two widows of a deceased

HINDU LAW—WIDOW—*continued.*

(1) INTEREST IN ESTATE OF HUSBAND—*concluded.*

(*a*) BY INHERITANCE—*concluded.*

Hindu, who, being childless, had before his death adopted a son, to whom also, by will, he bequeathed his estate. The adopted son died soon after the testator:—*Held*, that the widows had a possessory title or interest in the estate, notwithstanding that a preferable title might exist in others through the deceased legatee: also that the estate, being jointly held by them, was partible, and either widow might maintain a suit for partition. SUNDAR *v.* PARBATI.

[I. L. R. 12 All. 51
[L. R. 16 I. A. 186

(*b*) BY DEED, GIFT, OR WILL.

3.—*Deed of adoption by widow to deceased husband—Interest and powers of adoptive mother.*] The widow of a separated Hindu made an adoption to her deceased husband under a power to adopt conferred upon her by her husband's will. The deed by which the adoption, the validity of which was not disputed, was evidenced, contained, amongst others, the following conditions:—"that during my" (*i.e.*, the adoptive mother's) "lifetime, I shall be the owner and manager of the estate, and that after my death the adopted son should have the same rights and privileges as would have been enjoyed by the natural son of *I C M* born of me:"—*Held*, that these words conferred upon the widow an interest and an authority not less than she would have had as the widow of a separated sonless Hindu to whom no adoption had been made, so far as her position as manager was concerned. KALI DAS *v.* BIJAI SHANKAR.

[I. L. R. 13 All. 391

(2) POWER OF WIDOW.

(*a*) POWER OF DISPOSITION OR ALIENATION.

4.—*Gift with consent of reversioner—Subsequently-born reversioners.*] The widow of a separated Hindu being in possession as such widow of property left by her husband executed a deed of gift of such property in favour of her daughter's son, her daughter being also a party to the deed. Subsequently to the execution of this deed of gift the executant's daughter gave birth to another son:—*Held*, that the deed in question could not affect more than the life-interests of the executant and her daughter, and could not operate to prevent the succession (as to a moiety of the property) opening up in favour of the subsequently-born son on the death of the survivor of the two ladies. *Ramphal Rai* v. *Tula Kuari*, I. L. R. 6 All. 116, referred to. DULI SINGH *v.* SUNDAR SINGH.

[I. L. R. 14 All. 377

5.—*Mortgage by one of two co-widows invalid without the consent of the other—Their joint interests and title by survivorship—Construction of mortgage-deeds.*] One of two co-widows mortgaged, without the consent of the other, part of the estate to which they were jointly entitled by inheritance from their deceased husband:—*Held*, upon the construction of the deeds of mortgage executed by her that they were not so framed as

HINDU LAW—WIDOW—*concluded.*

(2) POWER OF WIDOW—*concluded.*

(*a*) POWER OF DISPOSITION OR ALIENATION—*concluded.*

to bind the estate in the possession of the surviving widow after the death of the mortgagor. But assuming that the deeds had been so framed, and that there had been what would have been a justifying necessity for a sole widow, or co-widows jointly, to have mortgaged an estate which had belonged to the deceased husband (a state of things not decided to have existed here), such a necessity could not render a mortgage attempted by one co-widow binding upon the estate, which had descended upon the widows for their joint lives with survivorship between them, so as to affect the interest of the surviving widow. *Bhugwandeen Doobey* v. *Myna Baee*, 11 Moo. I. A. 487, referred to and followed. GAJAPATI RADHAMANI GARU *v.* PUSAPATI ALAKAJESWARI.

[I. L. R. 16 Mad. 1
[L. R. 19 I. A. 184

6.—*Moveable property inherited from husband—Devolution of such property.*] Under the Mitakshara law a widow has no power to bequeath moveable property inherited by her from her husband. In the Presidency of Bombay, moveable property inherited by a widow from her husband devolves on her death to her husbands' heirs. If the decision in the case of *Damodar* v. *Purmanandas*, I. L. R. 7 Bom. 155, is to be regarded as necessarily giving to the heir of a widow on her death such moveable property inherited from her husband as remains undisposed of by her, it must be treated as of no authority GADADHAR BHAT *v.* CHANDRABHAGABAI.

[I. L. R. 17 Bom. 690

See HARILAL HARJIVANDAS *v.* PRANVALAVDAS PARBHUDAS.

[I. L. R. 16 Bom. 229

and BAI JAMNA *v.* BHAISHANKAR.

[I. L. R. 16 Bom. 233

(3) DISQUALIFICATION.

(*a*) UNCHASTITY.

7.—*Maintenance—Incontinence—Forfeiture of rights—Starving maintenance.*] It is a settled principle of Hindu law that a Hindu widow's right to claim maintenance is forfeited upon her unchastity. This rule is not to be restricted to women espoused, who are not of the rank of *patni* or wife. Where a widow became unchaste after her husband's death, and was leading an unchaste life at and about the date of suit, *held*, that she was not entitled to maintenance of any sort. *Quære*—Whether if she were to begin to lead a moral life she would not be entitled to a starving maintenance. *Honamma* v. *Timannabhat*, I. L. R. 1 Bom. 559, and *Valu* v. *Ganga*, I. L. R. 7 Bom. 84, referred to. ROMA NATH *alias* RAMANUND DHUR PODDAR *v.* RAJONIMONI DASI.

[I. L. R. 17 Calc. 674

See DAULTA KUARI *v.* MEGHU TIWARI.

[I. L. R. 15 All. 382

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[I. L. R. 17 Bom. 600

(1) POWER OF DISPOSITION.

1.—*Widow's share on partition—Right to deprive by will a widow of her share on partition.*] Under the Hindu law in Bengal a person has the right to dispose of his property by will so as to deprive his widow of her share on partition. *Bhobunmoyee Dabea Chowdhrani* v. *Ramkissore Acharj Chowdhry*, S. D. A. Rep. 1860, p. 485, followed. DEBENDRA COOMAR ROY CHOWDHRY *v.* BROJENDRA COOMAR ROY CHOWDHRY. PROSUNNOMOYI DASI *v.* BROJENDRA COOMAR ROY CHOWDHRY.

[I. L. R. 17 Calc. 886

2.—*Legacy by an undivided father of a Hindu family—Bequest for religious purposes.*] A Hindu made his will, whereby he bequeathed Rs. 600 to supply a silver image for a pagoda, and died leaving the defendant, his undivided adopted son, him surviving. He was not shown to have been possessed of any separate property. In a suit by the trustee of the pagoda to recover the above amount:—*Held*, that the legacy was not binding on the defendant. RATHNAM *v.* SIVASUBRAMANIA.

[I. L. R. 16 Mad. 353

(2) CONSTRUCTION.

(*a*) SPECIAL CASES OF CONSTRUCTION.

3.—*Adoption—Persona designata—Son about to be adopted—Adoption.*] Where, in a will, there was a clear indication of the testator's intention before making an adoption to give the greater part of his property to the boy whom he was about to adopt, and the bequest was by name to the latter, who was not selected as being the adopted son, but for reasons which though likely to lead to the adoption, were independent of it:—*Held*, that the bequest was effectual, notwithstanding that there had been no adoption. BIRESWAR MUKERJI *v.* ARDHA CHANDER ROY. SHIB CHANDER ROY *v.* GOBIND MOHINI.

[I. L. R. 19 Calc. 452
[L. R. 19 I. A. 101

4.—*Adoption—Adopted son where adoption is invalid—Endowment—Gift to shebaits—Effect of ikrarnama between widows in favour of sons whose adoption was invalid.*] A testator bequeathed all his property to a family *thakur*; and, to secure the *debsheba*, directed that his two widows should each adopt a son to him, the sons to become *shebaits* of the property dedicated, of which the widows, during the sons' minority, were to have control. When the two sons should have attained their majority, the two widows were, by the will, to make over to them, as *shebaits*, all the property dedicated; and out of the surplus income, after payment of the expenses of the *debsheba*, the two sons were to receive a fixed allowance, the residue being undisposed of. The widows having purported to adopt according to the will, then bound themselves by an *ikrarnama*, each to the other, to bring up the sons as their mothers and guardians; and, after payment of the expenses for the *debsheba*, to divide the surplus income into two equal shares, making accumulations, which should be handed over by each to the son adopted by her on his attaining majority. In a suit by the son purported to have been adopted by the elder widow, who was then dead, against the younger widow, and the son purported to have been adopted by her, in effect for the administration of the testator's estate, with a claim for relief based on acts of the widows, including the *ikrarnama* executed by them:—*Held—First*, that it being settled law that such an adoption was not valid, the plaintiff could take nothing under the will, because there was no gift to him except in the character of *shebait*; there having been no intention on the part of the testator, who apparently had no doubt as to the legality of his scheme to bring in a stranger as *shebait*. *Monemothonauth Day* v. *Onauthnauth Day*, Bourke 189: 2 Ind. Jur. N. S. 24, distinguished. *Secondly*, that, by the law of inheritance, the widows, as heirs, took the office of *shebait*, and became entitled to the beneficial interest in the surplus income for their estates for life; so that each of them could contract to bind her own interest. *Thirdly*, that there was no trust imposed upon the surviving widow independently of the contract which she had made; but that the *ikrarnama*, taken as part of the series of acts, gave to the boys, so far as the widows' interests extended, the same benefit that they would have taken had they been heirs; and although they were not, and could not have been at their age, parties to the *ikrarnama*, yet that they could insist on the performance of the contract, by which each widow bound herself to the other to deal with the estate in their favour. *Fourthly*, that each boy was entitled on attaining majority to half of the surplus income during the life of the surviving widow, and to the accumulations thereon; and accounts were accordingly directed against her. This widow, however, having died pending the appeal, after it had been argued, the testator's heir was added to the record, it resting with the plaintiff to apply to the Court below to add necessary parties. SURENDRO KESHUB ROY *v.* DOORGASOONDERY DOSSEE.

[I. L. R. 19 Calc. 513
[L. R. 19 I. A. 108

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION—*continued.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*contd.*

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION—*continued.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*contd.*

5.—*Adoption — Restricted power to widow to adopt.*] A Hindu in 1884 made a will therein described as being executed in favour of the testator's wife in which he said, "you must adopt for me a boy you like from the children that may be born in the families of my brothers," and after making certain provisions as to his property, &c., added "the principal object of this will is that you should adopt for me any suitable boy" After the testator's death the widow, as in exercise of the power conferred on her by the will, purported to adopt a boy who did not come within the description in the first of the above clauses, although one of the testator's brothers offered his own son in adoption. In a suit by the testator's brothers for a declaration that the adoption purported to have been made by the widow was invalid:—*Held*, that notwithstanding the general terms of the second of the above clauses, the widow's power to adopt was restricted by the first and the adoption purported to have been made by her was invalid. AMIRTHAYYAN *v.* KETHARAMAYYAN.

[I. L. R. 14 Mad. 65

6.—*Adoption—Bequest to a boy directed by the testator to be adopted by his widow—Direction for the boy's maintenance—Rights of the legatee no adoption having been made.*] A Hindu made his will whereby he provided that his property should be enjoyed by his widow, who should maintain certain persons, including the plaintiff, whom she was thereby directed to take in adoption, and added: "my aforesaid wife shall enjoy all my above-mentioned properties in every way as long as she may be alive, and after her death the same shall be taken possession of by the aforesaid adopted son." The testator died, not having taken the plaintiff in adoption, and his widow did not adopt him. In a suit by the plaintiff for maintenance and for the declaration of his title under the will:—*Held*, that all the provisions of the will relating to the plaintiff were intended by the testator to come into effect only in the event of the adoption being made, and consequently that the plaintiff had no right to the family property or to maintenance in the family. ABBU *v.* KUPPAMMAL.

[I. L. R. 16 Mad. 355

7.—*Adoption — Power to adopt conferred on testator's widow ended on estate vesting in his son's widow—Gift of beneficial interest.*] On a claim by the children of the testator's daughter, as against his brother's son, *held* that the testator's direction to his executor (who was his elder brother), to make over whatever remained of his estate, after payment of debts, to his, the testator's son ("when he comes of age"), had the effect of a gift to that son operating at that time; and that the words in the will, "if my minor son dies," meant, in order to be consistent with the above, "dies before attaining full age." On the death of the testator's son, after attaining full age and leaving a widow, the testator's widow, although empowered by the will to adopt if the

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION—*continued.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*contd.*

testator's son should die without son or daughter (which he did) could not exercise this power after the estate had, consequently upon the son's death, vested in his widow for her widow's estate. *Thayammal* v. *Venkataramma Aiyan*, L. R. 14 I. A. 67; I. L. R. 10 Mad. 205, referred to and followed. The testator's son, having succeeded to the estate under the above provisions, himself made his will, whereby he directed that "his cousin brother" (the defendant above-mentioned), on attaining full age, "becoming *dakilkar* of my share as well as the share of my elder uncle," should maintain his, the testator's, mother and widow:—*Held*, that this was not an absolute gift of the beneficial interest, and that the claim of the children of the daughter of the parent testator was valid. TARACHURN CHATTERJI *v.* SURESH CHUNDER MUKERJI.

[I. L. R. 17 Calc. 122

[L. R. 16 I. A. 166

8.—*Bequest to widow, "on account of maintenance"—Gift to widow of immoveable property—Widow's power of alienation.*] A Hindu testator, leaving a grandson by adoption him surviving, besides certain moveable property, bequeathed to his wife *T.* a house "on account of her maintenance":—*Held*, confirming the decision of the Court below, that though it was competent to testator by apt language to clothe his widow with a power of alienation, yet in the absence of such words, regard being had to the surrounding circumstances and to the ideas which Hindus have regarding the interest ordinarily enjoyed by women in immoveable property, it must be presumed that testator only meant to bequeath a life-interest. *Held*, also, that the heir-at-law was not liable to make good moneys expended on the premises by one holding under the widow with knowledge of the contents of the will. NUNNU MEAH *v.* KRISHNASAMI.

[I. L. R. 14 Mad. 274

9.—*Charitable bequest—Public charity—Sadavarat—Well—Cistern—Preference given to unmarried daughters over married daughter.*] *M*, a Hindu inhabitant of Bombay, died in 1886, leaving him surviving his widow, and three daughters, one married and two unmarried. The testator's will contained the following provisions:—Clause 6. "Should my wife die without leaving an heir, then as to whatever property of mine there may be left, the same be used as follows:—My trustees shall make the outlay for both the *sadavarats* and that for the work of repair of my property, out of my fund. And as to whatever surplus may remain out of the same, let my trustees pay to my brother *D M's* son, named *B R*, Rs. 50 *per* one month for his expenses. As to the surplus moneys which may remain out of the same after taking *B R's* advice are to be used in making the outlays for building a well and *avada* (*i.e.*, cistern of water for animals to drink out of). Such moneys are truly to be used by my trustees. 10. In my country, at the village of Shri Anjar, I am

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION—*continued.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*contd.*

at present carrying on a *sadavarat*. Similarly, out of my fund my trustees are always to continue (the same), and if there be heirs of mine, those also are to continue the same. The *sadavarat* shall never be stopped. 16. After my death my trustees shall out of my income set up a *sadavarat* in the town of Shri Nassik. In that *sidho* (articles of food) are to be given to each person as follows:—Flour weighing sixty rupees. *Dal* (pulse) weighing eight rupees. Salt and chillies. 18. A *sadavarat* of mine is now going on in the village of Shri Anjar, and I have written for another *sadavarat* to be set up at Shri Nassik. Thus my trustees are to carry on both the *sadavarats* in a good manner. And they are to pay the expenses thereof out of my funds. And when my trustees shall make over my property to any of my abovementioned heirs, or to any one who may hereafter be appointed as heir, in order that the expenses of both the *sadavarats* may be properly defrayed out of the interest (or rents), a sum of money sufficient for that, or houses, whichever my trustee may choose (*i.e.*) property sufficient to maintain the expenses of both the *sadavarats*, shall be set apart. And as to the property which may remain, my trustees shall make over the same to my heir but the sum or houses thus set apart for the expenses of the *sadavarats* are to be separated":—*Held* (1) That the bequest to the *sadavarat* at Anjar was valid. (2) That the bequest to the second *sadavarat* which by cl. 16 the testator directed to be established at Nassik, was valid, and was not void for uncertainty. The clear intention of the testator was that this *sadavarat* should be on the same scale as the one at Anjar, and there would, therefore, be no difficulty in ascertaining the nature of the *sadavarat* to be established and the sum to be expended upon it. (3) That the bequest in cl. 6 in the building of a well and cistern was valid as a charitable trust. (4) That under cl. 18 of the will the residue of the testator's property should go to the two unmarried daughters of the testator in preference to the married daughter. JAMNABAI *v.* KHIMJI VULLUBDASS.

[I. L. R. 14 Bom. 1

10.—*Charitable bequest—Bequest for dharma.*] Where a testator gave bequests for *dharma* (religious and charitable purposes) which he explained to be "doing all good works of a permanent nature" and "acting in such a manner as to give me a good name":—*Held*, that the bequest was void. CURSANDAS GOVINDJI *v.* VUNDRAVANDAS PURSHOTAM.

[I. L. R. 14 Bom. 482

11.—*Charitable bequest—Sadavarat—Bequest to a definite sadavarat—Bequest to two charitable objects, one of such bequests being invalid—Bequest of interest of a fund to A with invalid gift over of interest after A's death.*] Where a testator by his will directed certain rents to be used "for *sadavarat*," and where from the wording of the will

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION—*continued.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*contd.*

it appeared that the testator intended his executors to establish a definite *sadavarat* in some definite place, and not merely, at their discretion, themselves to distribute the income of the property at any indefinite place, and perhaps at many places, to Brahmins and travellers:—*Held*, that the bequest to charity was good, and an enquiry was directed as to the place at which such *sadavarat* should, at the proper time, be established, and a scheme for its administration was ordered to be prepared. A testator by his will directed that, if his daughters died without issue, the property of his daughters should be used by his executors for *dharm* and for *sadavarat*. *Held*, following *Hoare v. Osborne*, L. R. 1 Eq. 585, that the bequest was good to the extent of one-half in favour of the *sadavarat*. The gift to *dharm* being invalid, the other half was undisposed of. A testator by his will directed that his wife should enjoy for life the interest of a sum of Rs. 4,000 which was deposited with a certain firm, and that after her death the interest should be given to *dharm*. There was no residuary clause in the will. *Held*, that the gift to *dharm* being clearly bad, and there being no residuary clause in the will, the *corpus* of the Rs. 4,000 was undisposed of and went to the testator's widow. MORARJI CULLIANJI *v.* NENBAI.

[I. L. R. 17 Bom. 351

12.—*Election, doctrine of.*] The doctrine of election applies to wills made in India. *D*, a Hindu widow, died, making a will in respect of property which she had inherited from her husband. She bequeathed Rs. 2,000 as a legacy to the plaintiff and the immoveable property to *K*, the defendant's father. The plaintiff and *K* were the heirs of her husband. The plaintiff sued for the legacy under the will, and for half the immoveable property as heir:—*Held*, that the plaintiff should be put to his election whether to take the legacy under the will, or half the property as heir of the testator's husband. MANGALDAS *v.* RANCHHODDAS BHAVANIDAS.

[I. L. R. 14 Bom. 438

13.—*Life estate—Absolute estate—Estate vested in trustees.*] One *D* died, leaving two sons, *G* and *V*. His will contained the following clauses:—"5. As to the immoveable property which I have, the particulars thereof are as follows:—There is one *vadi* (*oart*) situated on the Girgaum Back Road. In it there are small and large bungalows, chawls, stables, sepoy's and *mali's* sheds, making in all thirteen buildings. Thereof one bungalow, bearing No. 23, shall be given to my two sons *G* and *V*, and to *K*, the widow of my brother *K M*, a denizen of paradise, (*i.e.*) to these three persons, to reside therein, and the remaining bungalows, chawls, stables and the large bungalow in which I live shall be let for rent. And out of the rent that may be realized therefrom, the expenses of repairs, Government taxes and the servants' wages being paid,

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION—*continued.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*contd.*

the surplus shall be paid to my son *G*. Out of such surplus this my son *G* shall pay the expenses of my house, of the maintenance of the said two sons, and of my said sister-in law, *i.e.*, all such expenses as I carry on, and also Rs. 15 *per* month for the worship of (the deity) Thakorji, of my house. *In this manner moneys are to be paid as long as there may be sons' heirs in my family.* And when there may be no son. (*i.e.*) male, as heir in my family, the whole property shall be all used on religious and charitable account, as stated in the below written clause. 8. My two sons and my sister-in-law, making three persons, shall reside in the bungalow No. 23. And if one of them, *i.e.*, my two sons, *V*, shall disagree with the others, he shall go out of the said *vadi* at the Girgaum Back Road and reside elsewhere; and as to his (*V's*) expenses out of the money which my son *G* may receive from the trustees for defraying the household expenses, he (*G*) shall continue to pay at the rate of Rs. 30 *per* one month to *V* for his (*V's*) own expenses during his and his son's lifetime. And if this my son *V* should not act peaceably and harmoniously towards this my son *G* and towards my (said) sister-in-law, then the above-mentioned money shall not be paid to him for expenses." The Court of First Instance held that, under the will, *G* was entitled to the property absolutely. *Held*, by the Appeal Court, that the proper construction of the will was that *G* was not entitled to an absolute estate, but was entitled to be paid by the trustees the income for his life, to be assigned by him as mentioned in the will. The circumstance that the estate was vested in trustees, and that the income was given as maintenance, forbade the estate given to *G* and *V* or either of them, being construed as an absolute estate. Moreover, as such an estate would admit females in the course of succession, this construction would not give effect to the intention of the testator, but would be to make a new will for him. VULLUBHDAS DAMODHAR *v.* THUCKER GORDHANDAS DAMODHAR.

[I. L. R. 14 Bom. 360

14.—*Life estate—Gift over—Male line, succession in—Malik—Putra poutrade krama.*] Case of the construction of a will and codicil, dated in 1865 and 1868 respectively, in which it was *held* that one *L* took a life-estate only, and that a gift over on failure of male issue of *L* at any remote time was bad. The word *malik* is consistent with a life-estate; and may well be applied to a person who owns an estate for life as well as to the absolute owner. Ordinarily, without other expressions indicating in what sense the word is used, it implies absolute ownership. The words *putra poutrade krama* have always been understood as words of general inheritance and, in the absence of a contrary intention being shown, would convey an absolute estate. But in construing both the word *malik* and the words *putra poutrade krama*, the expressions in the whole will must be taken together without any

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION—*continued.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*contd.*

one being insisted upon to the exclusion of others, *Held*, in this case, notwithstanding the words *malik* and *putra poutrade krama*, that there being expressions excluding the succession of females and confining the succession to male heirs, and the gift over referring to the failure of male issue at any remote time, and not to the event of *L's* death without leaving male issue, and there being also expressions indicating an intention not to grant an absolute alienable estate, the will should be construed as giving to *L* only a life estate. CHUKKUN LAL ROY *v.* LOLIT MOHAN ROY.

[I. L. R. 20 Calc. 906

15.—*Gift to a class—Gift to sons or daughters of M, who may be alive at M's death—Gift to a class to be ascertained at future time—One member of such class in existence at testator's death—Tugore case—Hindu Wills Act* (*XXI of* 1870), *s.* 3—*Succession Act* (*X of* 1865), *s.* 98.] *P*, a Hindu, died in September 1886, and left two sons, *viz.*, the plaintiff and one *M*. By his will, *P* left the residue of his property to trustees, who were to invest it in Government promissory notes and to pay the interest thereof to the wife of his son *M* and after her death to pay it to *M*. He further directed that after *M's* death "the amount of the interest is to be paid from time to time to his sons or daughters who may be alive according to what may be considered proper." By a subsequent clause he directed that, if there should be no one living of his son *M's* race or descent, the said Government notes should be given to a certain charitable fund. At the time of the testator's death the wife and one daughter (*C*) of *M*, were living. Subsequently a son was born to *M*, but this child died shortly after its birth. The wife of *M* died in September 1889, and *M* himself died in October 1889. The plaintiff then filed this suit claiming the property in question as heir of the testator to the exclusion of *C*, the daughter of *M*. He contended that she could only claim as one of the class of "sons or daughters" of *M* mentioned in the will; that the gift to this class was void, as it included, or might include, persons who were not in existence at the time of the testator's death:—*Held*, that *C* was entitled to the property under the will. The primary intention of the testator was that all the members of the class specified should take, and his secondary intention was that if all could not take, those who could, should do so. Here there was one member of the class who could take the property, and it might be inferred that the testator meant that she should take it, rather than that his intention should be defeated altogether. MANGALDAS PARMANANDAS *v.* TRIBHUVANDAS NARSIDAS.

[I. L. R. 15 Bom. 652

16.—*Gift to a class—Gift to a class some of whom are not in existence at testator's death—Right to live in a house given to parents and their children—Right of children under such gift independently of the parents.*] *B*, who died in 1856, left a

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION—*continued.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*contd.*

will, in the English form, whereby he bequeathed a house to his two sons, *V* and *M*, and directed that they should not sell or mortgage it, but were either to live in it, or enjoy the rents and revenue thereof for ever. He further directed as follows:—"My son-in-law *N*, with his wife *S*, and children to live in the house for ever." *V* died in 1838, and his four grandsons were the first four defendants in this suit. *M* became insolvent, and his interest passed to the Official Assignee, who was the fifth defendant. *S* was the testator's daughter, and she and her husband, *N*, went to live in the house in question when the testator first went to reside there, and they and their family had lived their ever since. Both the plaintiffs (her sons) were born in the testator's lifetime. *N* died in 1844. *S* died in 1887. Subsequently to her death her children (the plaintiffs) continued to reside in the house and to occupy the rooms which they had always occupied until April 1889, when the first four defendants, who were grandsons of *V*, dispossessed them. The plaintiffs filed this suit, praying for possession of the rooms, and for a declaration that they and their families were entitled to reside there. The defendants contended (1) that there was no gift to *S's* children independently of *N*; (2) that if there was a gift to the children, it was void, as being a gift to a class some members of which might have come into existence after the testator's death:—*Held*, that the clause in the will should be construed as giving the right to live in the house to *S* and the children after *N's* death. The benefit was intended to be conferred, not only on *N*, but also on his wife and children; that this was not a devise to a class in the sense in which that expression was used in *Leake* v. *Robinson* (2 Mer. 363), *viz.*, a gift to a body of persons uncertain in number at the time of the gift to be ascertained at a future time, the share of each being dependent for its amount upon the ultimate number of persons. The benefit which each member of the class was to take, was in no way dependent on the number of the children; each had a distinct and independent right to reside in the house, and the number of persons who might ultimately belong to the class was in no sense regarded as a criterion of the interest which each was to take. *Quære*—Whether *Soudaminey Dossee* v. *Jogesh Chunder Dutt*, I. L. R. 2 Calc. 262, and *Kherodemoney Dossee* v. *Doorgamoney Dossee*, I. L. R. 4 Calc. 455, are not overruled by *Rai Bishenchand* v. *Asmaida Koer*, I. L. R. 6 All. 560: L. R. 11 I. A. 164. KRISHNANATH NARAYAN *v.* ATMARAM NARAYAN.

[I. L. R. 15 Bom. 543

17.—*Gift to a class—Gift to a class some of whom are not in existence at testator's death—Contingent gift—Subsequent gift valid though prior gift void—Contingent gift—Succession Act, ss.* 98, 100, 102, 103—*Power of appointment given by will, effect of—General power of appointment.*] *M P* by his will dated 14th April 1873, after appointing his brother *J* to be his executor and directing the payment of legacies, bequeathed all his estate, moveable and immoveable, not otherwise disposed of, to *J*, his executors, administrators and assigns, upon trust to collect outstandings and to pay debts and legacies and to stand possessed of the residue in trust (1) for his (the testator's) wife *B*, and *A*, the wife of his brother *J*, during the life of both, or the survivor of them, for their or her sole use; (2) and from and after decease of the survivor of them in trust for the male issue of *J*, if any there be; (3) and, in default of such male issue, in trust for any person or persons, in any shares or share, and in such manner as his brother *J* should by any deed or deeds or writing or writings appoint with or without power of revocation or new appointment. *J* proved the will, and as executor managed the estate until his death on the 17th October 1888. He had no male issue, but he had two daughters, who were the defendants in this suit. Shortly before his death, *viz.*, on the 7th October 1888, he made a will (as stated therein) in accordance with the authority given to him by the last clause of the will of *M P*. He directed that twelve months after the death of *B* (*M P's* widow), the estate should be divided equally between his two daughters, *K* and *M*. *K* was born in *M P's* lifetime, but *M* not until after his death:—*Held*, that the trust in *M P's* will in favour of the male issue of *J* was void under the rule laid down in the *Tagore case*, 9 B. L. R. 377: L. R. I. A. Sup. Vol. 47. The testator plainly meant that the male issue of *J* living at the death of the survivor of the tenants for life should take the estate according to the rules of Hindu law, without distinguishing between those born in the lifetime of the testator and those born prior to that event, but subsequently to his death. At the death of the testator, *J* had no male issue, and the bequest was, therefore, a bequest to a person or persons not in being, and void:—*Held*, also, regarding the subsequent creation of the power in favour of *J* as equivalent to a gift of the estate to him, that such gift was valid, although the prior gift was void. It was a gift to him if he should have no male issue; a gift which, as he was alive at the death of the testator, was good under Hindu law. It was not a gift over to him on an indefinite failure of his male issue. It came into force immediately on the death of the surviving tenant for life if at that time he should have had no male issue alive between the death of the testator and the latter event. If a son had been born to him after the testator's death, the gift to him could not have come into operation. It was only in the event of no son being born to him that he could take. It would not, therefore, make any difference that the testator made an ineffectual and inoperative disposition in favour of such son if born. The rule of the *Tagore case*, that the gift of an estate to take effect after the failure of previously created invalid estates is void, did not apply. *Held*, further, that the power of appoint-

HINDU LAW—WILL—*continued.*

(2) CONSTRUCTION—*continued.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*contd.*

ment given by *M P's* will operated to confer ownership upon *J*, after the death of *B*, upon his executing his will, and that the bequests given by his will to his daughters, the defendants, were valid bequests. *Held*, on appeal, that the devise in *M P's* will in favour of the male issue of *J* meant in favour of such male issue as should be living at the time of the death of the survivor of the tenant for life, whether born in the lifetime of the testator or after his death; and as, at the death of the testator, *J* had no male issue, it was a gift to a person or persons not in being at that time, and, therefore, void under the rule in the *Tagore case*. *Held*, also, that the devise over, in default of such male issue, was an alternative gift to take effect on an event to be determined at the death of the survivor of the tenant for life, and consequently was not open to objection. *Held*, further—as to the bequest to such person or persons as *J* should, by deed or writing, appoint—that there was no clear principle of Hindu law which forbade such a bequest being construed, and effect given to it, according to its plain and literal terms; always subject, however, to the same restrictions as the Hindu testamentary law imposes on the testator himself, *viz.*, that the appointment should be made, so that (i) the appointee might be ascertained when the event arose on which he was to take (in this case, therefore, before the death of the surviving tenants for life), and (ii) the appointee be a person who was alive at the death of the testator. *Held*, accordingly, that in making this bequest the testator's intention was clearly to give *J* the ultimate disposal of the property, but not that it should form part of *J's* estate. The circumstance that English Courts, in such cases, treat the property, when the power has been exercised, as part of the estate of the appointor, in the interest of creditors, and some other persons favoured by the Court of Equity, could not affect the question as to what was the intention of *M P* when he made his will. Original Court's degree varied accordingly; the share in the residue appointed by *J* to his daughter *M* (born after the testator's death) being declared to be part of *M P's* estate of which he died intestate, and to belong, therefore, to his (*M P's*) heir. JAVERBAI *v.* KABLIBAI.

[I. L. R. 16 Bom. 492

varying decree in S. C. in lower Court.

[I. L. R. 15 Bom. 326

18.—*Survivorship—Gift to two persons for life jointly—Survivorship — Gift to a daughter and her children—Effect of power given to a daughter if she had no children to dispose of property bequeathed by will—Bequest for house expenses—Bequest by testator of his wife's ornaments—Election.*] *J*, a Hindu inhabitant of Bombay, died in November 1869, leaving a will, dated October 1869. He left a widow and one child, the plaintiff *M*,

HINDU LAW—WILL—*concluded.*

(2) CONSTRUCTION—*concluded.*

(*a*) SPECIAL CASES OF CONSTRUCTION—*concld.*

then about fourteen years of age. She had then been married for two years, but up to the time of this suit she had had no children. By this will the testator directed that his immoveable property in Bombay should be formed into a trust, and that the trustees were to collect the income thereof. By the fourteenth and fifteenth clauses of his will he directed that out of the trust-fund Rs 50 per month were to be paid both to his wife and daughter for their personal expenses. In the seventh clause he directed as follows: "After deducting expenses * * * money is to be paid out of the net income, whatever it may amount to, for the personal expenses of my wife and my daughter *M*, and for the children of my daughter *M* after her death agreeably to the fourteenth and fifteenth clauses of this will; and after paying the same whatever income may remain is to be paid for the purposes of my wife and my daughter *M* and her children in such manner as my trustees may think proper." The eighth clause directed that if *M* should have children, the trust should stand valid during the lifetime, and the trust-property should then be apportioned amongst the heirs. It then proceeded: "But should there be no children born of the womb of my daughter *M*, then after the death of *M* and my wife this trust is to become void, and the property delivered to such persons as my daughter *M* may direct it to be delivered by making her will": —*Held* (1) That the direction in the seventh clause amounted to a gift of the residue for the use of the testator's wife and *M*; that his wife and *M* were, under the clause, entitled to the income of the fund in equal shares during their joint lives, and that the survivor would take the whole for her lifetime. (2) That *M* having no children at the date of the testator's death the provision for her future children was void under the ruling in the *Tagore case*, 9 B. L. R. 377; L R. I. A. Sup. Vol. 47. (3) That the direction that if *M* had no children she might dispose of the property by will, was valid, and amounted to an absolute gift to her if she gave the requisite direction by will. The gift did not offend against the rule in the *Tagore case*. The persons to whom the property is given would take it from *M* and not from the testator. The testator by his will further directed that Rs. 750 a month were to be paid to his wife for the purpose of defraying the expenses of the house and the worship of Thakur (God). *Held*, that no part of this sum could be awarded to *M*. The testator expected that she would live with the testator's wife and made no provision for the event of her ceasing to do so. The testator also disposed of ornaments described as "my own and my wife's ornaments." *Held*, that the clause did not raise a question of election. The wife's *stridhan* ornaments would not fall within the clause if there were other ornaments which she wore, and of which the testator had power to dispose. BAI MAMUBAI *v.* DOSSA MORARJI.

[I. L. R. 15 Bom. 443

HINDU WIDOW.

See DECREE—CONSTRUCTION OF DECREE —GENERAL CASES.
[I. L. R. 17 Calc. 246

See HINDU LAW—ADOPTION—EFFECT OF ADOPTION.
[I L. R 14 Bom. 463

See HINDU LAW—FAMILY DWELLING-HOUSE.
[I. L. R. 17 Bom. 398

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.
[I. L. R. 19 Calc. 289

See HINDU LAW—PARTITION—RIGHT TO PARTITION - WIDOW.
[I. L. R. 12 All. 51

See HINDU LAW—PARTITION—SHARES ON PARTITION—WIDOW.
[I. L. R. 20 Calc. 682

See HINDU LAW—REVERSIONERS—SURRENDER BY WIDOW TO REVERSIONERS.
[I. L R. 19 Calc. 236

See CASES UNDER HINDU LAW—WIDOW.

See HINDU LAW—WILL—CONSTRUCTION —ELECTION, DOCTRINE OF.
[I. L. R. 14 Bom. 438

See LIMITATION ACT, 1877, ART. 132.
[I. L. R. 20 Calc. 79

See RES JUDICATA—MATTERS IN ISSUE.
[I. L. R. 20 Calc. 79

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT.
[I. L. R. 20 Calc. 498

——, Alienation by.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW.

See HINDU LAW—REVERSIONERS—CONVEYANCE BY WIDOW WITH REVERSIONER'S CONSENT.
[I L. R. 17 Calc. 896

——, Execution of deed by—

See ONUS PROBANDI—HINDU LAW—ALIENATION.
[I L. R. 19 Calc. 249

——, Former suit by—

See RES JUDICATA—ESTOPPEL BY JUDGMENT.
[I. L. R. 20 Calc. 906

HINDU WIDOW—*concluded.*

——, Manager of estate of.

See RECEIVER.
[I. L. R. 13 Mad. 390

——, Property assigned to, in lieu of maintenance.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.
[I. L. R. 15 All. 371

——, Re-marriage of—

See JURISDICTION OF CIVIL COURT—CASTE.
[I. L. R. 13 Mad. 293

HINDU WILLS ACT (XXI OF 1870.)

——, s. 2.

See PROBATE—EFFECT OF PROBATE
[I. L. R. 17 Calc. 272

See REPRESENTATIVE OF DECEASED PERSON.
[I. L. R. 14 Mad. 454

——, s. 3.

See HINDU LAW—WILL—CONSTRUCTION —GIFT TO A CLASS.
[I. L. R. 15 Bom. 652

HOLIDAY.

See LIMITATION ACT, 1877, s. 5.
[I. L. R. 18 Calc. 631

HOROSCOPE.

See EVIDENCE ACT, s. 32.
[I. L. R. 17 Calc 849

HUNDI.

See STAMP ACT, s. 3, CL. 10.
[I. L. R. 13 All. 66

——, Suit on—

See JURISDICTION — CAUSES OF JURISDICTION—CAUSE OF ACTION.
[I. L. R. 15 Bom. 93

—*Negotiable Instruments Act* (*XXVI of* 1881) *s.* 61 —*Presentment of hundi—Notice of dishonour—Indemnity-bond.*] In a suit on an indemnity-bond executed by way of collateral security by the maker of six *hundis*, it appeared that three of the *hundis* were paid, and when three which were unpaid were presented to the maker, he did not at once insist upon want of notice of dishonour or on non-presentment as a ground of discharge:—*Held*, that since the defendant did not prove that the drawee had effects of his to meet the *hundis* on presentment, or that he had sustained damage by reason of the want of notice of dishonour, the plaintiff was entitled to a decree. SHANMUGAN *v.* CHINNASAMI.
[I. L. R. 14 Mad. 470

HURT—Causing hurt.

See PENAL CODE, s. 81.

[I. L. R. 17 Bom. 626

See SENTENCE — CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105

——, Grievous hurt.

See SENTENCE — CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105
[I. L. R. 17 Bom. 260

—Child-wife—Culpable homicide not amounting to murder—Causing death by a rash and negligent act—Rashness and negligence—Penal Code, ss. 304, 304*A*, 325, 338—*Husband and wife.*] The prisoner, a fully developed adult man, was charged with causing the death of his wife, a girl aged about 11 years and 3 months, who had not attained puberty. The death was caused by hæmorrhage from a rupture of the vagina caused by the prisoner having sexual intercourse with the girl. For the defence it was alleged that he had had sexual intercourse with the girl on several previous occasions without injury to her, and there were circumstances in the case which showed that this was possible, and even not improbable, though the medical evidence was to the effect that, if such intercourse had previously taken place, the penetration was probably not so complete or with so much sexual vigour as on the occasion when the injury was caused. The medical evidence was further to the effect that the girl had not attained puberty, and was immature and wholly unfit for sexual intercourse; that under such circumstances sexual intercourse between the prisoner and the girl was likely to be dangerous to her, and to cause injuries more or less serious according to the degree of penetration effected. The prisoner was charged with (*a*) culpable homicide not amounting to murder under s. 304 of the Penal Code; (*b*) causing death by doing a rash and negligent act under s. 304A; (*c*) voluntarily causing grievous hurt under s. 325; and (*d*) causing grievous hurt by doing an act so rashly or negligently as to endanger human life or the personal safety of others under s. 338:—*Held*, that, in such a case, when the girl is a wife and above the age of 10 years, and when therefore the law of rape does not apply, it by no means follows that the law regards the wife as a thing made over to be the absolute property of her husband, or as a person outside the protection of the criminal law; that no hard-and-fast rule can be laid down that sexual intercourse with a girl under a certain age must be regarded as dangerous and punishable, or over that age as safe and right, but that each case must be judged according to its own individual circumstances; that in such a case the jury have to consider and say, whether under the particular circumstances of the case, having regard to the physical condition of the girl, and to the intention, the knowledge, the degree of rashness or negligence with which the accused is shown to have acted on the occasion in question, he has brought himself within any of the provisions of the criminal law. *Held*, further, that if the jury were of opinion (*a*) that the act of the prisoner caused the death of the girl, that is to say, that the act of cohabitation on the part of the prisoner had the effect of rupturing the vagina and so causing the hæmorrhage which led to her death; (*b*) that the act of cohabitation between a fully developed man like the prisoner and an immature girl like his wife was itself a thing likely to lead to dangerous consequences; (*c*) that that act was one of such a character as to indicate a reckless indifference to the welfare of the girl or a want of reasonable consideration about what the prisoner was doing, one which the husband of the girl, if he had had a reasonable regard to her welfare, and had exercised reasonable thought as to the act he contemplated doing, would have abstained from doing, they would be justified in finding that the prisoner caused the death of the girl by a rash and negligent act. Under no system of law with which Courts have to do in this country, whether Hindu or Mahomedan, or that framed under British rule, has it ever been the law that a husband has the absolute right to enjoy the person of his wife without regard to the question of safety to her. QUEEN-EMPRESS *v.* HURREE MOHUN MYTHEE.

[I. L. R. 18 Calc. 49

HUSBAND AND WIFE.

See BURMESE LAW—DIVORCE.

[I. L. R. 19 Calc. 469

See COMPLAINT—INSTITUTION OF COMPLAINT AND NECESSARY PRELIMINARIES.

[I. L. R. 14 Mad. 379

See HINDU LAW—HUSBAND AND WIFE.

[I. L. R. 18 All. 126

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIFE.

[I. L. R. 19 Calc. 84

See HINDU LAW—MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGE.

[I. L. R. 17 Bom. 400

See HURT—GRIEVOUS HURT.

[I. L. R. 18 Calc. 49

See KIDNAPPING.

[I. L. R. 17 Calc. 298

See LIMITATION ACT, s. 23.

[I. L. R. 16 Bom. 714, 715 note

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[I. L. R. 13 Mad. 17
[I. L. R. 16 Bom. 299
[I. L. R. 13 All. 348
[I. L. R. 15 All. 143

HUSBAND AND WIFE—*concluded.*

See PARSIS.

[I. L. R. 17 Bom. 146

See PARTIES—SUBSTITUTION OF PARTIES—RESPONDENTS.

[I. L. R. 17 Bom. 758

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS.

[I. L. R. 15 Bom. 177

See REPRESENTATIVE OF DECEASED PERSON.

[I. L. R. 17 Bom. 758

—*Custom prevailing amongst Parsis as to ownership of presents made to a bride—Joint ownership—Right of survivorship.*] By the custom prevailing amongst Parsis, presents of money and ornaments made to a bride at betrothal, and between betrothal and marriage, and at marriage and the increment thereof belong to the husband and wife jointly during their lives, and on the death of either pass absolutely to the survivor. *Semble*—The same custom prevails with regard to special and costly cloths (*i. e.* clothes intended to be worn only on special occasions and ceremonies) presented during the same period. BYRAMJI BHIMJIBHAI *v.* JAMSETJI NOWROJI KAPADIA.

[I. L. R. 16 Bom. 630

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See HINDU LAW—INHERITANCE—DIVESTING, OF EXCLUSION FROM, AND FORFEITURE OF INHERITANCE—INSANITY.

[I. L. R. 12 All. 530

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See HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION.

[I. L. R. 17 Bom. 271

——, Property of.

See HINDU LAW—ENDOWMENT—DISMISSAL OF MANAGER.

[I. L. R. 17 Bom. 600, 620 note

ILLEGITIMACY.

See HINDU LAW—MARRIAGE.

[I. L. R. 18 Calc. 264

ILLEGITIMATE SON.

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN.

[I. L. R. 19 Calc. 91

[I. L. R. 14 Bom. 282

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

[I. L. R. 18 Calc. 151

IMMOVEABLE PROPERTY.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.

[I. L. R. 14 All. 30

See FINE.

[I. L. R. 20 Calc. 478

See FISHERY, RIGHT OF.

[I. L. R. 20 Calc. 446

See MUNSIF, JURISDICTION OF.

[I. L. R. 19 Calc. 8

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CROPS.

[I. L. R. 14 All. 30

See SPECIFIC RELIEF ACT, S. 9.

[I. L. R. 18 Calc. 80

[I. L. R. 19 Calc. 544

[I. L. R. 13 Mad. 54

[I. L. R. 13 All. 537

——, In possession of third party.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 14 Bom. 369

——, Interest in.

See CASES UNDER LIMITATION ACT, 1877, ART. 144—INTEREST IN IMMOVEABLE PROPERTY.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—TITLE, QUESTION OF.

[I. L. R. 15 Bom. 400

——, Transfer of.

See HINDU LAW—GIFT—REQUISITES FOR GIFT.

[I. L. R. 20 Calc. 464

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[I. L. R. 19 Calc. 623

IMPARTIBLE PROPERTY.

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R. 15 Bom. 247

See HINDU LAW—ALIENATION—RESTRAINT ON ALIENATION.

[I. L. R. 13 Mad. 197

See CASES UNDER HINDU LAW—INHERITANCE—IMPARTIBLE PROPERTY.

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

[I. L. R. 18 Calc. 151

IMPARTIBLE PROPERTY—*concluded.*

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY.

[I. L. R. 15 Bom. 32

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—GENERAL CASES.

[I. L. R. 16 Mad. 268

See HINDU LAW—PARTITION—PROPERTY LIABLE OR NOT TO PARTITION.

[I. L. R. 15 Bom. 519

IMPOTENCE.

See MARRIAGE.

[I. L. R. 16 Bom. 639

IMPRISONMENT.

See INSOLVENT ACT, s. 50.

[I. L. R. 17 Calc. 209

See WHIPPING.

[I. L. R. 16 Bom. 357

—*Civil Procedure Code*, 1882. *s.* 342—*Period of imprisonment of judgment-debtor.*] The Court cannot fix any period for the imprisonment of a judgment-debtor under Civil Procedure Code, s. 342. SUBUDHI *v.* SINGI.

[I. L. R. 13 Mad. 141

IMPROVEMENTS.

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[I. L. R. 13 Mad. 454, 502

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See GRANT—RESUMPTION OR REVOCATION OF GRANT.

[I. L. R. 14 Mad. 431

See SERVICE TENURE.

[I. L. R. 17 Bom. 431

INAM COMMISSIONER.

——, Rent fixed by.

See MADRAS REGULATION XXV OF 1802.

[I. L. R. 16 Mad. 34

See MADRAS RENT RECOVERY ACT, s. 1.

[I. L. R. 16 Mad. 40

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See BOMBAY ACT III OF 1869, s. 8.

[I. L. R. 17 Bom. 422

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT.

[I. L. R. 17 Bom. 475

See JURISDICTION OF CIVIL COURT—CUSTOMARY PAYMENTS.

[I. L. R. 16 Bom. 649

INAMDAR—*concluded.*

See LANDLORD AND TENANT—NATURE OF TENANCY.

[I. L. R. 17 Bom. 475

See MADRAS RENT RECOVERY ACT, s. 1.

[I. L. R. 16 Mad. 40

——, Suit by.

See BOMBAY LAND REVENUE ACT, ss. 85, 86.

[I. L. R. 16 Bom. 586

INDEMNITY, CONTRACT OF.

See VOLUNTARY PAYMENT.

[I. L. R. 14 Bom. 299

INFORMATION OF COMMISSION OF OFFENCE.

See ACCOMPLICE.

[I. L. R. 21 Calc. 328

—*Criminal Procedure Code* (*Act X of* 1882), *s.* 45—*Penal Code* (*Act XLV of* 1860), *s.* 176—*Omission to give information to Police of offence.*] Where one of several persons bound to give information to the Police under s. 45 of the Criminal Procedure Code, gave such information as to the commission of a murder, in consequence of which a Police-officer arrived in the village shortly after the occurrence, *held*, that the fact that other persons who might possibly also be bound to give that information had omitted to do so was no ground for their prosecution and conviction of an offence under s. 176 of the Penal Code. *In the matter of the petition of Sashi Bhusan Chuckra butty*, I. L. R. 4 Calc. 623, relied on. QUEEN-EMPRESS *v.* GOPAL SINGH.

[I. L. R. 20 Calc. 316

INHERITANCE.

See HINDU LAW—CUSTOM—INHERITANCE.

[I. L. R. 14 Mad. 163

See CASES UNDER HINDU LAW—INHERITANCE.

See MAHOMEDAN LAW—INHERITANCE.

[I. L. R. 14 Mad. 324
[I. L. R. 12 All. 290

——, Disqualification for.

See MALABAR LAW—CUSTOM.

[I. L. R. 13 Mad. 209

See MALABAR LAW—INHERITANCE.

[I. L. R. 14 Mad. 289

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[I. L. R. 15 Mad. 261

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[I. L. R. 18 Calc. 10
[I. L. R. 12 All. 436

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[I. L. R. 13 All. 98

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[I. L. R. 14 Bom. 395
[I. L. R. 20 Calc. 834

See DECLARATORY DECREE, SUIT FOR—MISCELLANEOUS SUITS.

[I. L. R. 14 Mad. 167

See HINDU LAW—MARRIAGE.

[I. L. R. 14 Mad. 316

See JURISDICTION OF CIVIL COURT—RELIGION.

[I. L. R. 15 Mad. 355

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[I. L. R. 16 Mad. 407

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[I. L. R. 18 Calc. 448

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[I. L. R. 14 Bom. 17
[I. L. R. 15 Bom. 177

See PARTIES—SUIT BY SOME OF CLASS AS REPRESENTATIVES OF CLASS.

[I. L. R. 15 Bom. 309

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[I. L. R. 17 Bom. 648

——, Order refusing to set aside.

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[I. L. R. 15 All. 8

——, Suit for.

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 13 Mad. 445

——, Suit for and for declaration of right.

See VALUATION OF SUIT—SUITS.

[I. L. R. 17 Bom. 56

INJUNCTION—*continued.*

—— to restrain sale.

See MORTGAGE—POWER OF SALE.

[I. L. R. 17 Bom. 711

(1) SPECIAL CASES.

(*a*) BREACH OF AGREEMENT.

1.—*Specific Relief Act* (*I of* 1877), *ss* 20, 21, 57—*Contract Act* (*IX of* 1872), *s* 39—*Contract for personal service—Contract for more than three years - Interim injunction.*] The defendant signed an agreement in England with a Railway Company, whereby he contracted to serve the Company exclusively for four years in India under a penalty of £100. The defendant having come to India at the expense of the Company and served it for two years, left its service for that of another employer, alleging that he had not been fairly treated by a locomotive superintendent:—*Held*, that the defendant had no right to rescind the agreement, and the plaintiff Company was entitled to an interlocutory injunction restraining defendant from serving others on the terms that the plaintiff Company should consent to retain him in its employ. MADRAS RAILWAY COMPANY *v.* RUST.

[I. L. R. 14 Mad. 18

(*b*) EXECUTION OF DECREE.

2.—*Specific Relief Act* (*I of* 1877), *s.* 56 (*b*)—*Suit by junior members of a tarwad—Injunction restraining execution of a decree obtained in a suit against plaintiffs' karnavan*] In a suit brought in a Subordinate Court by the junior members of a Malabar *tarwad* against their *karnavan* and others, the plaintiffs prayed for a declaration of the *uraima* right of their *tarwad* in a certain *devasom*, and for an injunction to restrain the defendants, other than the members of the plaintiffs' *tarwad*, from executing a decree of a District Court, passed on appeal from a Munsif's Court, whereby certain lands of the *devasom* were decreed to be surrendered to them in the character of *uralers*: it appeared (1) that plaintiffs' *karnavan* was a party to the suit in which the abovementioned decree was passed; (2) that the plaintiffs' *tarwad* was otherwise entitled to the *uraima* right by adverse possession, if not immemorial title:—*Held*, that the injunction sought was not precluded by Specific Relief Act, s. 56 (*b*); and that the plaintiffs were entitled to the decree as prayed. APPU *v.* RAMAN.

[I. L. R. 14 Mad. 425

(*c*) OBSTRUCTION TO RIGHTS OF PROPERTY.

3.—*Right to have water carried off over neighbouring roof—Party wall, right to build on or continue—Eaves projecting for more than thirty years over neighbouring property—Damages, suit for—Issues.*] Where the plaintiff's eaves had projected over the defendants' roof, which rested on a wall common between the parties, for more than thirty years, and the plaintiff had thus acquired a right to have the water carried from his roof on to the defendants' roof, and where the defendants raised the common wall and removed the

INJUNCTION—*concluded.*

(1) SPECIAL CASES—*concluded.*

(*c*) OBSTRUCTION TO RIGHTS OF PROPERTY —*concluded.*

plaintiff's eaves:—*Held*, that the plaintiff was entitled to relief either by damages or injunction; to determine which, issues were framed according to the state of the authorities and sent for the findings of the lower Court. NASARBHAI AHMEDBHAI *v.* BADRUDIN.

[I. L. R. 16 Bom. 533

(*d*) TRADE-MARK.

4.—*Infringement of patent — Label—Details different, but general similarity likely to deceive.*] The plaintiffs sued the defendant for an infringement of their label used on tins of aniline dye, which they imported into Bombay. The label covered the top of the tin, and bore upon it the picture of an elephant in the centre of a curved band; the rest of the label being a combination in green, red and gold, representations, for the most part, of coins, medals, and tracing. The defendant was the agent in Bombay of Cassella & Co., of Frankfort. Prior to 1892, Cassella & Co. had imported aniline dye into Bombay in tins bearing a label, the chief feature of which was an elephant. Of that label, however, the plaintiffs did not complain. But in January 1892, Cassella & Co. adopted a new label, also bearing the picture of an elephant, different in some respects from the picture on the plaintiffs' label and with new surroundings, to none of which, taken separately, did the plaintiffs object, but they complained that in its general effect this new label was so similar to their trade-mark as to amount to a colourable imitation thereof, and to be likely to deceive purchasers:—*Held*, that the plaintiffs were entitled to an injunction against the defendant. *Per* SARGENT, C. J.:—The question in a case of this description is not what would be the effect on brokers or even dealers in Bombay, but how the label would be likely to strike incautious or unwary purchasers, such as are to be found more particularly in the Mofussil. After a careful examination I cannot feel any doubt that the attention of such purchasers would be arrested by the general effect of the label, and that notwithstanding such differences, as undoubtedly exist in respect to the colour and size of the elephant and in some other respects, they would regard the labels as symbolical of the plaintiffs' goods. The remarks of LORD SELBORNE in *Johnston* v. *Orr Ewing*, 7 Ap. Ca. 219, relied on. *Per* STARLING, J.:—It is quite possible for a label, no part of which is a copy of another label, to be a colourable imitation of that other label, and to be so like it in general appearance as to be likely to deceive purchasers. BADISCHE ANILINE AND SODA FABRIK *v.* MANECKJI SHAPURJI KATRAK.

[I. L. R. 17 Bom. 584

INSANITY.

See HINDU LAW—HUSBAND AND WIFE.

[I. L. R. 13 All. 126

INSANITY—*concluded.*

See HINDU LAW—INHERITANCE—DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—INSANITY.

[I. L. R. 18 Calc. 111

[I. L. R. 12 All. 530

See MALABAR LAW—INHERITANCE.

[I. L. R. 14 Mad. 289

—*Penal Code, s.* 84 - *Confession by ganja smoker of murder of wife.*] The accused, who was a habitual *ganja* smoker, was charged with the murder of his wife and infant son. In his confession he stated that he had killed his wife because she quarrelled with him and objected to go to another village where he proposed a change of home on account of their poverty: he adhered to this statement when placed for trial before the Court of Session. The High Court *held* that this was not a plea of guilty on the charge of murder but an allegation of sudden provocation, and he ought to have been put on his trial in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder:—*Held*, (*per* BIRDWOOD and JARDINE, JJ.) that, unless the accused's habit of smoking *ganja* had induced in him such a diseased state of mind as to make him incapable of knowing the nature of his act or its criminality, s. 84 of the Penal Code did not apply in his favour. QUEEN-EMPRESS *v.* SAKHARAM.

[I. L. R. 14 Bom. 564

INSOLVENCY.

Col.

1. Assignments by Debtor ... 501
2. Insolvent Debtors under Civil Procedure Code 502

See ATTACHMENT — ATTACHMENT OF PERSON.

[I. L. R. 20 Calc. 874

See DEBTOR AND CREDITOR.

[I. L. R. 16 Mad. 85

See RIGHT OF SUIT—INSOLVENCY.

[I. L. R. 16 Bom. 452

——, of plaintiff.

See DECREE—ALTERATION OR AMENDMENT OF DECREE.

[I. L. R. 16 Bom. 404

——, order dismissing petition of—

See APPEAL—ORDERS.

[I. L. R. 15 Mad. 89

—— proceedings under Civil Procedure Code.

See RECEIVER.

[I. L. R. 15 Mad. 233

INSOLVENCY—*continued.*

(1) ASSIGNMENTS BY DEBTOR.

1.—*Mortgage by trading partnership of all its assets when solvent for advances present and future—Change of partners with continuance of mortgage liability—Validity of mortgage security.*] If a trader assigns all his property, except on some substantial contemporaneous payment, or substantial undertaking to make a subsequent payment, that is an act of insolvency, and is void against the creditors on his insolvency, simply because nothing is left wherewith to carry on the business; whereas, if he receives such assistance, something is left to carry on the business. A trading partnership, before its insolvency, assigned by mortgage all its assets to a creditor, who simultaneously made a substantial advance to the firm, agreeing to make future advances:—*Held*, that the mortgage would have covered such assets of the then firm as were in existence at the time of the insolvency, and would not have been void, as against the other creditors, and the Official Assignee, because the assistance was substantial, and the then solvent firm was not left by the assignment without means. Another question was raised upon the facts that, after the mortgage and before the insolvency, new partners entered the firm, and new stock-in-trade was brought in. The new partners were to be under the same liability to the secured creditors, the security continuing with respect to the new firm and the after-acquired stock, as it stood with respect to the old. *Held*, that this arrangement did not invalidate the prior security, amounting, as it did, to a mere substitution of persons and goods at the time of the change. Also the incoming partners received substantial consideration; for, although the obligation, under the former agreement with the old firm, for the rest of the advances, not then made, was remitted, a new obligation was entered into that a sum of money should be provided, which was afterwards supplied. The incoming partners got the benefit of a suretyship which the mortgagees had entered into for the former firm. These were the considerations to the incoming partners at the time. As the original contract would have been, the new one was, valid against the Official Assignee. KHOO KWAT SIEW *v.* WOOI TAIK HWAT.

[I. L. R. 19 Calc. 223

[L. R. 19 I. A. 15

2.—*Assignment in fraud of creditors—Transferee in good faith and for value.*] A transfer of property made to certain creditors fraudulently and in contemplation of the insolvency of the transferor is not voidable at the suit of another creditor if the transferees were purchasers in good faith and for consideration. GOPAL *v.* BANK OF MADRAS.

[I. L. R. 16 Mad. 397

3.—*Mortgage to secure a barred debt since renewed—Fraudulent preference—Voluntary transfer—Civil Procedure Code, ss.* 344, 351.] On 1st January 1886 a partnership theretofore existing between *A* and *B* was dissolved and the deed of

INSOLVENCY—*continued.*

(1) ASSIGNMENTS BY DEBTOR—*concluded.*

dissolution provided, *inter alia*, for the execution by *B*, on demand, of a mortgage on the plantation house (then subject to a subsisting mortgage in favour of the Agra Bank) to secure the repayment of a debt due by the firm to the trustees of *A's* marriage settlement. A suit against the firm was pending at the date of the deed of dissolution, and it was dismissed by the Court of First Instance and an appeal was preferred to the High Court. Before the appeal came on for hearing the debt to *A's* trustees was barred by limitation, but *A* by a letter consented to pay it, and the trustees demanded the execution of the mortgage as agreed on and offered to pay off the Bank. Shortly afterwards, *viz.*, in December 1888, the appeal came on in the High Court, which held that the appellant's claim was valid and called on the Court of First Instance for a further finding. On 2nd January 1889 *B* executed a mortgage of the plantation house in pursuance of the above agreement, and in June the trustees paid off the Bank. In April the High Court in the above appeal passed a decree for the appellant. In consequence of this decree *B* became involved in pecuniary difficulties: in October he found himself insolvent and ceased to carry on business, and in February 1890 he applied under the Civil Procedure Code, s. 344, to be declared an insolvent. His application was opposed by the holders of the High Court decree on the ground that the mortgage of 2nd January 1889 had been executed with the object of defeating their claim:—*Held*, that the execution of the mortgage of January 1889 afforded no reason for rejecting the application under the Civil Procedure Code, s. 351, since it was supported by consideration and did not amount to an act of fraudulent preference, not being a voluntary transfer. *Butcher* v. *Stead*, L. R. 7 E. and I. Ap 839, followed. BROWN *v.* FERGUSON.

[I. L. R. 16 Mad. 499

(2) INSOLVENT-DEBTORS UNDER CIVIL PROCEDURE CODE.

4.—*Civil Procedure Code* (*Act XIV of* 1882), *Chap. XX, ss.* 344—360—*Discharge of insolvent—Future earnings of insolvent, power of Court to compel payments out of, towards liquidation of debts.*] The function of the Court, acting under Chapter XX of the Code of Civil Procedure, is to compel insolvent-debtors to pay their debts if it can, either by its compulsory process, or, where that cannot be used, by withholding from them, when it has the power of doing so, the relief to which they might otherwise be considered entitled. The granting of an order of discharge under that Chapter is to a certain extent discretionary with the Court, and if the Court be of opinion that an insolvent may reasonably be expected to possess an income accruing during the time of his insolvency and likely to continue, even if such income be from sources such that it could not be attached, it ought very seriously to consider whether under such circumstances it ought to exercise its power to discharge the insolvent, and not rather stay its

INSOLVENCY—*continued.*

(2) INSOLVENT-DEBTORS UNDER CIVIL PROCEDURE CODE—*continued.*

hand and require him as a condition of such discharge to satisfy it by payments on account of his debts, that he really desires, so far as he can, honestly to discharge the debt that he owes. A Gyawal, who was in receipt of a very considerable income, derived from offerings made by pilgrims, applied to be declared an insolvent under the provisions of Chapter XX of the Code of Civil Procedure. He was opposed by a judgment-creditor, who, *inter alia*, contended that the insolvent should be compelled to contribute out of his income towards the payment of his debts. The Court finding that there were no assets, and holding that such income was not property capable of being attached, and that it had no power to order an insolvent to pay anything out of future earnings towards the discharge of his debts, declared the applicant an insolvent and granted him his discharge:—*Held*, that the Court had power to withhold the discharge until the insolvent had satisfied it, by payments on account of his debts, that he really desired to discharge his debts, and that, under the circumstances of the case, both having regard to the fact that the inquiry into the estate of the insolvent had been insufficient, and to the fact that he was in a position to contribute out of his income towards the payment of his debts, the order was wrong and should be set aside. POONA LAL *v.* KANHAYA LALL BHAIA.

[I. L. R. 19 Calc. 730

5.—*Civil Procedure Code, ss.* 350, 359—*Procedure in case of dishonest applicant—Powers of Court.*] A Court is competent to take action under s. 359 of the Civil Procedure Code at the instance of a creditor, after the hearing under s. 350 has determined. When once any of the frauds referred to in clauses (*a*), (*b*) or (*c*) of s. 359 have been proved at a hearing under s. 350, the Court must under s. 359 either itself pass sentence on the applicant who has committed such frauds, or must send him to a Magistrate to be dealt with according to law. The Court has no option to decline to adopt either of these courses. In acting under s. 359, the Court does not re-try the questions of fact decided by it at the hearing under s. 350, but has to proceed upon the findings come to at that hearing. An applicant for a declaration of insolvency who does not avail himself of his right of appeal from the order rejecting his application, is concluded by the findings of fact at the hearing under s. 350, and cannot afterwards question them. *Per* STRAIGHT, J.—It is desirable that an application under s. 359 should be made immediately, or as soon as possible, after the hearing under s. 350, but a delay of some months will not make the application unentertainable. KADIR BAKSH *v.* BHAWANI PRASAD.

[I. L. R. 14 All. 145

6.—*Civil Procedure Code, s.* 351—*Execution of decree.*] A decree-holder in respect of whose judgment-debtor an order declaring him insolvent and appointing a receiver has been passed under s. 351 of the Code of Civil Procedure, and whose decree has been placed on the list of the judgment-debtor's schedule debts cannot, *pari passu* with the proceedings in insolvency, go on executing his decree in the ordinary way against that judgment-debtor. *Badal Singh* v. *Birch.* I. L. R 15 Calc. 762, and *Abdool Rahman* v. *Behari Puri*, I. L. R. 10 All. 194, distinguished. GAURI DATT *v.* SHANKAR LAL.

[I. L. R. 14 All. 358

INSOLVENT ACT (11 AND 12 VICT., c. 21).

See PARTIES—PARTIES TO SUITS—OFFICIAL ASSIGNEE.

[I. L. R. 18 Calc. 43

——, s. 7.—*Vesting order in insolvency, effect of—Application for attachment and for rateable distribution of sale-proceeds—Civil Procedure Code, ss* 295 *and* 622.] A debtor against whom several decrees had been passed, filed his petition in the Insolvent Court at Madras, and the usual vesting order was made. One of the decree-holders had already attached property of the insolvent and had obtained an order for sale in a District Court, and now another decree-holder applied to the same Court in execution of his decrees for the attachment of other property, and for rateable distribution of the proceeds of the sale to be held in execution of the attachment already made. The District Judge held that the vesting order was a bar to both of these applications:—*Held*, (1) that the order rejecting the application for fresh attachment was right; (2) that the order rejecting the application for rateable distribution was wrong, and that the High Court had power to set it aside on revision under Civil Procedure Code, s. 622. VIRARAGHAVA *v.* PARASURAMA.

[I. L. R. 15 Mad. 372

——, s 9.

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

[I. L. R. 14 Bom. 189

1.—s. 9.—*Trader beyond jurisdiction carrying on business by gomasta within jurisdiction—"Departure"—"Intent."*] *D*, resident in Azimgunge, carried on business as a banker and money-lender in (amongst other places) Calcutta through his *gomasta P*, who carried on the business on the second storey of the business premises, having his residence on the third storey, the whole of the premises belonging to *D*. *D* having gone away on pilgrimage, the Calcutta business became involved, and on the 6th February 1893 *P* stopped payment and retired to the third storey, but was accessible to all creditors either in the office where business was usually carried on, or in the private room on the third storey. Upon such stoppage

INSOLVENCY—*concluded.*

(2) INSOLVENT-DEBTORS UNDER CIVIL PROCEDURE CODE—*concluded.*

INSOLVENT ACT (11 AND 12 VICT., c. 21), s. 9—*continued.*

of payment telegrams were sent to *D*, who hurried back to Calcutta, and reached it on 11th February, and took up his quarters in the same premises, and subsequently had several meetings with his creditors:—*Held*, that such stoppage of payment was not an act of insolvency within the meaning of the Insolvent Act, and that the retirement of *P* to his rooms on the third storey was not a departure with the intention to defeat and delay the creditors of *D*. *Held*, further, that a departure such as is made an act of insolvency by s. 9 of the Act is a departure by the debtor personally, and cannot be committed by any other person on his behalf. Such departure must be his departure, and the intent to depart must be proved to be his intent. Moreover, a man cannot commit an act of insolvency by an act of his agent which he has not authorised, and of which act he had no cognisance. *In re Hurruck Chand Golicha*, I. L. R. 5 Calc. 605, dissented from. *Per* PIGOT, J.—Under the circumstances no special powers or position ought to be attributed to *P*, who was merely an ordinary managing *gomasta*. IN RE DHUNPUT SINGH.

[I. L. R. 20 Calc. 771

2.—s. 9 and s. 92.—*Petitioning creditor's debt—Joint debt—Members of Hindu joint family carrying on business—Partners in trade.*] A trader in Madras made a promissory note in the joint names of two merchants, trading together as members of an undivided Hindu family, on which Rs 527 were due. On a petition by the holders of the note to have the maker adjudicated an insolvent:—*Held*, that the petitioning creditors' debt was sufficient to support the petition, they being "persons being a creditor to the amount of Rs 500" within the meaning of s. 9, read with s. 92 of the Insolvent Act. *Quære*—Whether members of a joint Hindu family carrying on business are not partners in trade within s. 9, cl. 2. EX PARTE RAGAVALOO CHETTI. IN RE RANGIAH CHETTI.

[I. L. R. 15 Mad. 356

———, s. 39.—*Mutual credit—Debt.*] A "mutual credit" within the meaning of s. 39 of the Insolvent Act must in its nature terminate in a debt. MILLER *v.* NATIONAL BANK OF INDIA.

[I. L. R. 19 Calc. 146

———, s. 47.

See s. 51.

[I. L. R. 13 Mad. 150

———, s. 40.—*Agreement of commission—Cesser of interest on filing of petition.*] By a document styled an "agreement of commission" the executant acknowledged the receipt of a loan and bound himself to pay commission thereon at the rate of 10 per cent. per month and to repay the principal in two years and nine months. It appears that the so-called commission was in the nature of interest, and was fixed at a high rate, because the debtor was expected to obtain the lease of a forest and to derive large profits therefrom. The debtor filed his petition in the Insolvency Court on 1st September 1884:—*Held*, that the creditor was not entitled to a dividend in respect of commission claimed to have accrued due after that date. SUBBARAYALU *v.* ROWLANDSON.

[I. L. R. 14 Mad. 133

INSOLVENT ACT (11 AND 12 VICT., c. 21), s. 40—*continued.*

———, s. 50.

See BAIL.

[I. L. R. 17 Bom. 334

1.—s. 50.—*Imprisonment of insolvent on Criminal side—False entries in books—Fraudulent preference—Fraudulent transfers — Warrant, illegality of—Concealment of property.*] S. 50 of the Insolvent Act provides a punishment by way of penalty, and before an insolvent can be punished under that section, he must be shown by legal evidence to have committed, on some specific occasion, one or other of the offences enumerated in that section. A law of this kind, the intention of which is to punish, should be administered as the criminal law is administered, that is to say specific offences should be charged, not technically specific in the sense of a specific form of indictment, but the Court and the insolvent and all concerned should know what offence the insolvent is being tried for; and the evidence should be directed to the proof of that offence, so that the accused may be in a position to produce evidence to rebut the charge of that offence; and the Judge should specifically find what offence the insolvent has been guilty of: and in his judgment and order and in the warrant it should appear what the insolvent has done. A warrant committing an insolvent to jail for offences under s. 50 of the Insolvent Act, including amongst the offences for which he is committed, an offence not contained in that section, is invalid. IN THE MATTER OF RASH BEHARY ROY *v.* BHUGWAN CHUNDER ROY.

[I. L. R. 17 Calc. 209

2.—s. 50.—*Lower Burma Courts Act (XI of 1889), ss. 50 and 69, cls. (b) and (c)—Criminal case.*] A petition presented to the Special Court under s. 50, cl. (5) of the Lower Burma Courts Act, by a person considering himself aggrieved by an order of the Recorder, sitting as Insolvency Commissioner, made under s. 50 of the Insolvent Act, comes before the Special Court as a criminal case, and is therefore to be dealt with in case of difference of opinion between the members of the Special Court, under s. 69, cl. (*c*) of the Lower Burma Courts Act. The punishment which can be awarded under s. 50 of the Insolvent Act is a punishment for something which the person to be punished has done, and is not inflicted in order to compel him to do something in the future, and the case in which it is inflicted is therefore a criminal case. *Rash Behary Roy* v. *Bhugwan Chunder Roy*, I. L. R. 17 Calc. 209, followed. YEO SWEE CHOON *v.* CHARTERED BANK OF INDIA, AUSTRALIA AND CHINA.

[I. L. R. 19 Calc. 605

INSOLVENT ACT (11 AND 12 VICT., c. 21) —*continued.*

3.—s. 50 and s. 51—*Conduct of insolvent amounting to offences within ss.* 50, 51—*Conduct of insolvent considered with reference to the following charges filed against him by opposing creditors, viz., reckless speculation; contracting debts without reasonable expectation of paying them; misconduct in contracting debts; concealment of property; obtaining forbearance by false representations; contracting debts by false pretences; undue preference.*] The insolvent had for many years carried on business in Bombay as a merchant. His firm (Messrs B. and A. Hormarji) had been established in 1830 by his uncle and father. On the death of the latter in 1882 the insolvent was left the sole surviving partner, and from that time until his failure he carried on the business alone. The failure took place in April 1891, and on the 1st May 1891, he was adjudicated an insolvent. His liabilities were stated to be Rs. 47,93,591; his good assets Rs. 5,13,903, and his doubtful assets Rs. 60,014. His discharge was opposed by six banks in Bombay with which he had had dealings. The grounds of opposition were as follows:—(1) Reckless speculation; (2) contracting debts without any reasonable expectation, at the time when the same were contracted, of paying the same; (3) gross misconduct in contracting debts; (4) concealment of property; (5) obtaining forbearance from the opposing creditors by making false representations to them; (6) contracting debts by means of false pretences; (7) fraudulently and with intent of diminishing the sum to be divided among his creditors, or of giving an undue preference to creditors, having discharged a debt due by the insolvent. It appeared that down to the end of 1889 there was nothing in the dealings of the firm to which objection could be taken. In the first half of the year 1890 the insolvent must have sustained heavy loss, as his mercantile assets over liabilities which, on the 31st December 1889, were Rs. 5,50,794, were, on the 30th June 1890, reduced to Rs. 2,29,612 The charges, however, against the insolvent were based upon his conduct subsequently to the latter date. On that day (30th June 1890) the insolvent nominally possessed four lakhs of rupees, the saleable value of which was about 2½ lakhs. With his finances in this state the insolvent speculated in exchange, and in six months (*viz.*, before the 31st December 1890) he had lost his four lakhs of nominal capital, and 19 or 23 lakhs of rupees besides. The Court *held* (1) As to the first ground of opposition, that the insolvent was guilty of rash and reckless speculation. This, however, was not an offence within the meaning of s. 51 of the Indian Insolvent Act (11 and 12 Vic. c. 21). When the insolvent entered into the contracts which had resulted in the loss he had a fair capital, and though his speculations were excessive in amount he had a fairly reasonable expectation that there would not be such a fall in exchange as would more than absorb his assets. (2) As to the second and third grounds of opposition, that they were proved in respect of the insolvent's transactions subsequently to December 1890, and that the insolvent was guilty of gross misconduct in contracting debts, having no reasonable or probable expectation, at the time when they were contracted, of paying them, and that his conduct fell within the purview of s. 51 of the Insolvent Act. In December 1890 the insolvent was bankrupt to the extent (at all events) of over 16 lakhs, and had on hand large forward contracts which then showed a further probable loss. In that position he entered into further large speculative sales of exchange. He had then no assets with which to meet any loss. (3) As to the fourth ground of opposition, that it was proved. (4) As to the fifth ground of opposition, that it was not established. On the 18th April 1891 the insolvent called a meeting of creditors and laid a not very candid or truthful statement of his affairs before them. Nothing was then arranged, and the meeting was adjourned for a week, in order that a committee should examine the insolvent's position, &c. It was understood and arranged that in the meantime no steps should be taken against the insolvent, and that he should keep his affairs in *statu quo*. The insolvent, however, swore that he understood he was to make no large payments, but that he was to keep the firm going. During that week the insolvent paid Rs. 3,193 due on a bill to one of the banks and Rs. 472 on re-draft account, a few insignificant current expenses and Rs. 1,000 to his solicitors, who were preparing a trust-deed to be carried before the creditors. The Court was of opinion that the conduct of the insolvent in making these payments did not amount to the offence charged in the fifth ground of opposition, *viz.*, obtaining forbearance from the opposing creditors by making false representations to them. (5) As to the sixth ground, that it was not established. On the 14th March the insolvent in answer to enquiries had assured the Manager of the Chartered Bank that his firm was quite sound and solvent, it being then to his knowledge hopelessly insolvent. On that day the Manager accepted the insolvent's bills for £20,000 for which security was given, and subsequently the insolvent sold one of his own bills for £10,000 to the Bank. This, however, was in pursuance of a previous contract. The evidence of the Manager showed that it was because of this contract, and not because of the false representation of the insolvent, that he purchased the draft for £10 000. The Court was of opinion that the transaction did not come within s. 50. (6) As to the seventh ground (undue preference), that it was not proved. On the 16th April 1891, the day but one before the insolvent held a meeting of his creditors, he sent Rs. 5,000 to Messrs. Elliott & Sons in England. That firm had accepted bills of the insolvent which he was bound to take up, but the earliest did not fall due until the 20th May 1891. His practice had been to remit money a day or two before bills became due. The Court was of opinion that the transaction was not an undue preference within s. 50. It was no doubt a voluntary payment, but it was not shown to be a fraudulent discharge of a debt within the section. A mere voluntary payment of a debt is not within the purview of the section. Such a payment must be fraudulent and must be made with the intent of diminishing the sum to be divided

INSOLVENT ACT (11 AND 12 VICT., c. 21), s. 50—*continued.*

INSOLVENT ACT (11 AND 12 VICT., c. 21), s. 50—*continued.*

amongst creditors, or of giving an undue preference to any of the creditors. From the mere fact of a voluntary payment fraud of a penal nature cannot be inferred. Here nothing more was proved than a voluntary payment by a man in insolvent circumstances. The insolvent knew he was in difficulties, but was of so sanguine a nature that he believed he could surmount them, and so Rs. 5,000 were sent rather with a view to keep up his English connection than with the fraudulent intent of giving an undue preference. Where an undue preference is made penal the Court must be satisfied that the guilty intention necessary to constitute the offence existed in the mind of the insolvent, and ought not to assume it unless the circumstances point to no other probable conclusion. The release by an insolvent of a debt due to him without receiving payment would undoubtedly fall within the scope of s. 50 of the Insolvent Act IN THE MATTER OF HORMARJI ARDESIR HORMARJI.

[I. L. R. 17 Bom. 313

———, s. 51.

See s. 50.

[I. L. R. 17 Bom. 313

See ARREST—CIVIL ARREST.

[I. L. R. 13 Mad. 150

———, s. 51 and s. 47—*Commissioner in Insolvency, power of—Committal to jail.*] The Commissioner in Insolvency committed an insolvent to jail by an order under s. 51 of the Insolvent Act:—*Held*, by the Full Bench, that an order made under s. 51 of the Insolvent Act is a final order: and a Commissioner in Insolvency has no power under that section to commit an insolvent to jail, but must leave the excepted judgment-creditors (if any) to their ordinary remedies for the time mentioned in the order. *Nixon* v. *Chartered Mercantile Bank*, I. L. R. 8 Mad. 97, overruled. SAMARAPURI *v.* PARRY AND CO.

[I. L. R. 13 Mad. 150

———, ss. 72, 73.—*Appeal—Limitation — Evidence.*] Certain creditors of an insolvent appealed against an order declaring him entitled to his personal discharge. The appeal time expired during the vacation of the Court, and the appeal petition was presented on the day when the Court re-opened. During the insolvency proceedings evidence was not recorded under s. 72, and the appellant sought on appeal to use the Commissioner's notes of evidence:—*Held* (1) that the appeal was not barred by limitation; (2) that it was not competent to the Court to refer to the Commissioner's notes. ABDOOL *v.* MAHAMED.

[I. L. R. 14 Mad. 404

1.—s. 73.—*Appeal by insolvent—Insolvent convicted and sentenced to imprisonment under s. 50 of the Insolvent Act—Power of High Court to admit insolvent to bail pending appeal.*] A insolvent was convicted by the Insolvent Court of an

INSOLVENT ACT (11 AND 12 VICT., c. 21), s. 73—*concluded.*

offence under s. 50 of the Insolvent Act (Stat. 11 and 12 Vict, c. 21), and sentenced to imprisonment. Under s. 73 of the Act he appealed against the decision and sentence of the Insolvent Court and applied to be admitted to bail pending the hearing of his appeal:—*Held*, refusing the application, that the High Court had no power to admit him to bail. IN THE MATTER OF HORMARJI ARDESIR HORMARJI.

[I. L. R. 17 Bom. 334

2.— s. 73.—*Practice—Appeal from an order of adjudication—Respondent on record withdrawing from appeal — Other creditors allowed to appear in appeal as respondents although not named on the record—Costs of Official Assignee.*] An order was made by the Insolvent Court adjudging *H* an insolvent on the petition of certain of his creditors. *H* appealed against the order, the petitioning creditors being the respondents named on the record. When the appeal came on for hearing, the said respondents did not appear, and it was alleged that the appellant had settled with them, in order to induce them to withdraw from the appeal. Another creditor, whose name was in the insolvent's schedule, thereupon applied to be heard in the appeal in support of the order of adjudication, and if necessary that his name should be entered on the record as respondent. The Court granted the application. The Official Assignee is entitled to his costs of appearing in an appeal against an order of adjudication. IN THE MATTER OF HAROON MAHOMED.

[I. L. R. 14 Bom. 189

———, s. 92.

See s. 9.

[I. L. R. 15 Mad. 356

INSPECTION OF DOCUMENTS—CIVIL CASES.

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

[I. L. R. 20 Calc. 587

1.—*Discovery — Affidavit of documents when there are several plaintiffs, some of whom are in England—Practice—Privilege—Grounds of privilege.*] Where there are several plaintiffs, all of them must join in making the affidavit of documents, unless some specific reasons to the contrary are shown. The fact that some of the plaintiffs reside in England is no reason why they should be excused from making such affidavit. Documents which contain the purport of interviews with, and of advice received from, the plaintiffs' solicitors and counsel as to the plaintiffs' position in regard to their said claim and as to the steps to be taken thereto, are privileged. Documents which record the steps taken by the plaintiffs from time to time in prosecuting their claim against the defendant, are not privileged. Opinions upon, or steps taken in reference to, a suit in which plaintiffs and defendants are putting forward opposing contentions, cannot be said to

INSPECTION OF DOCUMENTS—CIVIL CASES—*concluded.*

relate solely to the case of the plaintiff, and are not privileged. RYRIE *v.* SHIVSHANKAR GOPALJI.

[I. L. R. 15 Bom. 7

2.—*Discovery—Co-defendants—Inspection granted to defendant against co-defendant.*] A defendant may obtain discovery or inspection as against a co-defendant if the latter can be regarded as an opposite party. The plaintiff sued to set aside a mortgage made by his uncle (defendant No. 3) to defendants Nos. 1 and 2, alleging that shortly after he (the plaintiff) had attained his majority he had been induced to join in the mortgage by the undue influence and threats of his uncle (defendant No. 3), who represented that the money to be raised by the mortgage was required to pay off the debts of the plaintiff's father. The plaintiff further alleged that he had received none of the money, and that no money had been paid by defendants Nos. 1 and 2 to the third defendant in his presence. Defendants Nos. 1 and 2 took out a summons against the third defendant for inspection of certain account books and documents. It was objected that no question was raised in the suit between the third defendant and defendants Nos. 1 and 2, and that, consequently, under s. 131 of the Civil Procedure Code (XIV of 1882), the latter were not entitled to inspection:—*Held*, that inspection must be given. It was possible that not being able to set aside the mortgage as regarded himself, the third defendant was colluding with the plaintiff. Under the circumstances he might be considered a "party opposite" to the first two defendants, although eventually the Court might not be able to make any order between him and them. ANANDRAO VITHAL *v.* BUDRA MALLA.

[I. L. R. 17 Bom. 384

3.—*Discovery—Documents of title, refusal to produce—Suit for ejectment.*] The plaintiff sued to eject the defendant from certain pieces of land belonging to him, being portions of a passage upon which the defendant had encroached. In his written statement the defendant denied the plaintiff's title and stated that he would rely on certain deeds set forth in a schedule annexed thereto. In his affidavit of documents subsequently filed he objected to produce the deeds for the plaintiff's inspection on the ground that they related solely to his own title to the land in dispute, and did not in any way tend to prove or support the title of the plaintiff thereto:—*Held*, that the defendant was entitled to refuse production of the deeds. The Court could not go behind the defendant's affidavit of documents. VINAYAKRAO DHUNDIRAJ *v.* NAROTAM ANANDJI.

[I. L. R. 17 Bom. 581

INSPECTION OF DOCUMENTS—CRIMINAL CASES.

Criminal Procedure Code (Act X of 1882), s. 94—Summons to produce document or thing.] A complaint having been preferred against an accused for criminal breach of trust with reference (amongst other items) to a sum of Rs. 1,77,131-1-2, which sum was, in an enquiry held by the Chief Presidency Magistrate, proved to have been paid to the accused in seventeen notes of rupees ten thousand each (the numbers of which were identified) and the remainder in small notes and cash; the accused in cross-examination, for his own purposes, proved that fifteen of these notes were still in his possession; whereupon an application was made, under s. 94 of the Code, for a summons on the accused, directing the production of these notes. This application was refused. Subsequently the accused, through a third person, cashed five of these notes, whereupon a second application was made, under s. 94, by the prosecution for the production of the notes or their proceeds as against accused and such third person. The Magistrate granted summonses on the accused and on such third person for the production of ten notes, but declined to grant a summons for such third person for the proceeds of the five notes cashed. The accused produced five of these notes which were in his possession or power; the third person, however, stating that he had in his power five of the notes mentioned in the summons, claimed a lien on the same, and the Magistrate thereupon refused to make any order on him. The Magistrate (a rule having been obtained against him, calling on him to show cause why his order should not be set aside, and why the notes or the proceeds thereof in the hands of the third person should not be produced) stated in his explanatory letter that he entertained doubts as to his power to compel such third person to produce the five notes, inasmuch as a lien had been claimed on them, and that he was of opinion that the proceeds of the notes cashed, not being specific objects, did not come within the purview of s. 94:—*Held*, the Magistrate's order must be set aside. IN THE MATTER OF THE NIZAM OF HYDERABAD *v.* JACOB.

[I. L. R. 19 Calc. 52

INSPECTOR, MUNICIPAL.

See PUBLIC SERVANT.

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See EXECUTION OF DECREE — ORDERS AND DECREES OF PRIVY COUNCIL.

[I. L. R. 15 Mad. 203

——, Rate of—

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[I. L. R. 20 Calc. 328

See HINDU LAW—ALIENATION—ALIENATION BY WIDOW — ALIENATION FOR LEGAL NECESSITY.

[I. L. R. 18 Calc. 311

See HINDU LAW—USURY.

[I. L. R. 15 Bom. 84, 625

See INSOLVENT ACT, s. 40.

[I. L. R. 14 Mad. 133

INTEREST—*continued.*

See LIMITATION ACT, 1877, ART. 116.

[I. L. R. 19 Calc. 19

See LIMITATION ACT, 1877, ART. 148.

[I. L. R. 14 Bom. 113

(1) MISCELLANEOUS CASES.

(*a*) MONEY LENT.

1.—*Interest on money lent according to contract.*] Interest on money lent was contracted to be payable, "even if a suit should be instituted," at the rate fixed for the period for which the money was lent:—*Held*, that interest must be decreed at this rate, according to the contract, down to the institution of the suit. BALGOBIND DAS *v.* NARAIN LAL.

[I. L. R. 15 All. 339

[L. R. 20 I. A. 116

(2) OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED.

(*a*) DECREES.

2.—*Decree for sale in suit by puisne mortgagee—Rate agreed on in mortgage—Act XXIII of 1861, s. 10—Civil Procedure Code, s. 209.*] Upon a claim by a puisne mortgagee to redeem prior incumbrances and in the alternative for a decree ordering the sale of the property mortgaged, the sale was decreed, with application of the purchase-money to pay incumbrances in their due order, and with redemption by the plaintiff of a prior mortgagee who was to have an option to redeem. As regards the Court's power to regulate the interest, *held*, that although, in the decree for sale, the rate of interest on the debt, payable to the mortgage decree-holder, was reducible from the date of the decree from the rate stipulated, to the Court rate, an order to that effect could only be made for the benefit of the judgment-debtor, as a party to the suit. The plaintiff, seeking to redeem a mortgage prior to the suit, must pay the interest as the rate agreed upon in the mortgage; there being no authority, either under s. 10 of Act XXIII of 1861, or under the Civil Procedure Code, s. 209, to reduce it to the Court rate. UMES CHUNDER SIRCAR *v.* ZAHUR FATIMA.

[I. L. R. 18 Calc. 164

[L. R. 17 I. A. 201

(*b*) CONTRACTS.

3.—*Acknowledgment to prevent debt being barred—Rate of interest from date of acknowledgment.*] In reference to a debt carrying interest at a certain rate, the debtor gave to the creditor, on the approach of the date when the debt would have been barred by limitation, an acknowledgment to prevent that from occurring:—*Held*, that the acknowledgment, being intended only for the purpose of eluding the law of limitation, had not, by any novation of the contract, given to the creditor a right, in the absence of special stipulation to the contrary, to claim interest at a rate higher than that which the debt had borne down

INTEREST—*continued.*

(2) OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—*contd.*

(*b*) CONTRACTS—*continued.*

to the date when the acknowledgment was made. TANJORE RAMACHANDRA RAU *v.* VELLYANADAN PONNUSAMI.

[I. L. R. 14 Mad. 258
[L. R. 18 I. A. 37

4.—*Mortgage-bond—Interest post diem—Damages—Bond.*] Interest *post diem* on a mortgage-bond for a term certain and containing no express provision as to the payment of *post diem* interest is nothing else than damages for the breach of a contract. Such interest cannot be regarded as a mere continuance of the *ad diem* interest due on the mortgage-bond, and, as such, as forming an integral part of the mortgage-debt, nor even as resembling such interest and forming a "charge" upon the property, though nominally damages. In respect of *post diem* interest given by way of damages, no distinction is to be drawn between simple bonds and mortgage-bonds. *Mansab Ali* v. *Gulab Chand*, I. L. R. 10 All. 85; and *Bhagwant Singh* v. *Daryao Singh*, I. L. R. 11 All. 416, followed; *Cook* v. *Fowler*, L. R. 7 H. L. 27; *Bishen Dayal* v. *Udit Narain*, I. L. R. 8 All. 486; and *Rajpati Singh* v. *Kesh Narain Singh*, Weekly Notes, 1890, p. 149, referred to. NIWAS RAM PANDE *v.* UDIT NARAIN MISR.

[I. L. R. 13 All. 330

5.—*Mortgage-bond—Interest at rate stated in bond—Discretion of the Court—Civil Procedure Code* (*Act XIV of* 1882), *s.* 209—*Transfer of Property Act, s.* 86.] The terms of s. 86 of the Transfer of Property Act exclude the discretion conferred on the Court by s. 209 of the Civil Procedure Code in cases coming under the Transfer of Property Act. *Mangniram Marwari* v. *Dhowtal Roy*, I. L. R. 12 Calc. 659, distinguished. *Mangniram Marwari* v. *Rajpati Koeri*, I. L. R. 20 Calc. 366 note, approved. Section 86 of the Transfer of Property Act binds the Court to give a decree at the rate of interest provided by the mortgage if it be a rate to which no valid legal objection can be taken; that interest must be so computed down to the day fixed by the Court, according to the terms of the 2nd paragraph of the section, that is, the day being one within six months from declaring in Court the amount due. The amount to be declared due is the amount due for principal and interest on the mortgage, including interest at the rate provided by the mortgage-deed up to the day so fixed; it is the same whether it be ascertained on an account being taken by the order of the Court, or be ascertained by the Court itself. SURYA NARAIN SINGH *v.* JOGENDRA NARAIN ROY CHOWDHURY.

[I. L. R. 20 Calc. 360

MAGNIRAM MARWARI *v.* RAJPATI KOERI.

[I. L. R. 20 Calc. 366 note

6.—*Interest Act* (*XXXII of* 1839)—*Interest on mortgage money—Transfer of Property Act* (*IV of* 1882), *s.* 88—*Charge on mortgaged property.*] The Court has power under the Interest Act

INTEREST—*continued.*

(2) OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—*concld.*

(*b*) CONTRACTS—*concluded.*

(XXXII of 1839), to give interest on mortgage money, as it is money payable at a certain time, and under a written instrument: and the terms of s. 88 of the Transfer of Property Act make such interest recoverable or payable out of the mortgaged property. The interest on the mortgage is not necessarily only the interest which the parties stipulated by the mortgage-deed should be paid, but would also include interest which under the law is payable, *e.g.*, interest after the due date of the mortgage, where there is no stipulation for interest after the due date. BIKRAMJIT TEWARI *v.* DURGA DYAL TEWARI.

[I. L. R. 21 Calc. 274

7.—*Construction of mortgage—Compound interest—Relative rights of first and second mortgagees of the same property—Mortgage-decree giving terms of redemption of the first by the second.*] There being a first and a second mortgage of the same property, a mortgage-decree (that upon the first by consent) was obtained by each mortgagee respectively, neither of them being a party to the decree obtained by the other. In the first mortgage it was agreed that, on default by the mortgagor, interest at 12 per cent. should be paid on the principal and interest taken together, the latter being calculated with annual rests. At a judicial sale under the decree obtained by the first mortgagee, he became the purchaser of the greater part of the property. In this suit, which was brought by the first mortgagee's heir now representing him against the second mortgagee, making the mortgagors parties, for a declaration of his rights, it was decided that the second mortgagee was entitled to redeem the first mortgage. But the Appellate Court, referring to the consent decree having given simple interest only, made this the basis of an inference that compound interest must now be disallowed:—*Held*, that this was not the right inference; and compound interest was allowed, according to the terms of the mortgage. GANGA PERSHAD SAHU *v.* LAND MORTGAGE BANK.

[I. L. R. 21 Calc. 366

(3) STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE.

8.—*Bond—Failure to pay on due date—Enhanced rate of interest from date of bond till date of realization—Penalty—Contract Act* (*IX of* 1872), *s.* 74.] *Held* by the Full Bench (BANERJEE, J., dissenting as to part)—A provision in a bond to the effect that the principal should be repaid with interest on the due date, and that on failure thereof interest should be paid at an increased rate from the date of the bond up to the date of realization, amounts to a provision for a penalty, and s. 74 of the Contract Act applies to the money claimed at the increased rate of interest from the date of the bond until realization. *Mackintosh* v. *Crow*, I. L. R. 9 Calc. 689; *Nanjappa* v. *Nanjappa*, I. L. R. 12 Mad. 161, and

INTEREST—*continued.*

(3) STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—*continued.*

Sajaji Panhaji v. *Maruti*, I. L. R. 14 Bom. 274, approved; *Baij Nath Singh* v. *Shah Ali Hosain*, I. L. R. 14 Calc. 248, overruled so far as it dissents from *Mackintosh* v. *Crow*; *Balkishen Das* v. *Run Bahadur Singh*, I. L. R. 10 Calc. 305, distinguished. BANERJEE, J.—The decision in *Mackintosh* v. *Crow*, which regards the interest at the increased rate as a penalty, is correct as to the claim of interest up to the stipulated day of re-payment, and *Baij Nath Singh* v. *Shah Ali Hosain* was wrongly decided as to this point. Section 74 of the Contract Act applies only to that part of the claim for interest which is in respect of the period from the date of the bond to the due date, and has no application to the claim for interest for the period from the due date to the date of realization. This view is in accordance with the decision in *Mackintosh* v. *Crow* KALACHAND KYAL *v.* SHIB CHUNDER ROY.

[I. L. R. 19 Calc. 392

9.—*Bond—Default in payment on due date—Enhanced interest—Contract Act (IX of 1872), s. 74—Breach of contract.*] A mortgage-bond provided that interest for the loan should be paid at Rs. 2 per month, and that if the loan were not paid off by a certain day, then future interest from the date of default should be paid at Rs. 3 *per* month:—*Held*, that the higher rate of interest was not a penalty, and might be enforced. DULLABHDAS DEVCHANDSHET *v.* LAKSHMANDAS SWARUPCHAND.

[I. L. R. 14 Bom. 200

10.—*Stipulation in a mortgage-bond for enhanced interest in default of payment on a certain day — Contract Act (IX of 1872), s. 74.*] A mortgage-bond provided for repayment of the loan on a certain date with interest at the rate of 8¼ *per cent.* In default of payment on the due date, interest was to be paid at the rate of 37 *per cent.* to be calculated from the commencement of the loan:—*Held*, that the higher rate of interest was a penalty, and not to be enforced. SAJAJI PANHAJI *v.* MARUTI.

[I. L. R. 14 Bom. 274

11.—*Enhanced rate in default of payment—Liquidated damages—Contract Act (IX of 1872), s. 74.*] A proviso for retrospective enhancement of interest, in default of payment of the interest at a due date, is generally a penalty which should be relieved against; but a proviso for enhanced interest in the future cannot be considered as a penalty unless the enhanced rate be such as to lead to the conclusion that it could not have been intended to be part of the primary contract between the parties. UMARKHAN MAHAMADKHAN DESHMUKH *v.* SALEKHAN.

[I. L. R. 17 Bom. 106

12.—*Contract Act, s. 74 — Bond — Penalty.*] Where in a contract under which interest is payable it is agreed between the parties that if such interest be not paid punctually the defaulter shall be liable to pay interest at an enhanced rate

INTEREST—*concluded.*

(3) STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE—*concluded.*

(whether from the time of default or from the time when interest first became payable under the contract) such agreement does not come within s. 74 of the Contract Act, and is to be construed according to the intentions of the parties as expressed therein and not as a stipulation for a penalty. Such agreement is to be enforced according to its terms, unless it be found to have been when made unconscionable or fraudulent. The English doctrine of penal stipulations as applied to such agreements considered and not followed. *Balkishen Das* v. *Run Bahadur Singh*, I. L. R. 10 Calc. 305; L. R. 10 I. A. 162, considered. BANKE BEHARI *v.* SUNDAR LAL.

[I. L. R. 15 All. 232

13.—*Compound interest—Mortgage-deed—Penalty.*] Where a mortgage-deed stipulated for payment of half-yearly instalments of interest, and in case of default in such payments, provided for compound interest:—*Held* that such a provision was not in the nature of a penalty; and there being no question of fraud or oppression, improper dealing, exorbitant amount, dealing with an ignorant person, or any such consideration, the stipulation as to interest must be enforced. *Mangniram Marwari* v. *Rajpati Koeri*, I. L. R. 20 Calc. 366 note, approved. SURYA NARAIN SINGH *v.* JOGENDRA NARAIN ROY CHOWDHURY.

[I. L. R. 20 Calc. 360

INTEREST ACT (XXXII OF 1839).

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS.

[I. L. R. 21 Calc. 274

INTERROGATORIES.

1.—*Discovery—Fishing questions—Practice—Defective pleadings—Issues—Code of Civil Procedure (Act XIV of 1882), ss. 121—127.*] Interrogatories are not in this country to be framed to anticipate or supply defects of pleading or to ascertain the case of the other side. Where the pleading of either party is too vague, the Court may call for a further or fuller written statement, or may frame and record issues until the case raised by the pleadings is ascertained with sufficient clearness. A plaintiff may interrogate with a view to obtain information or admission in support of his own case, and this right extends not only to his original case, but also to any answers which he has to make to the defendant's case, subject to the qualification (*inter alia*) that the interrogatories must be directed to a case on which the plaintiff has already determined, and to which he has committed himself. He cannot be allowed to put fishing questions in order to try whether he can discover any flaw in the defendant's case or suggest any answer to it. ALI KADER SYUD HOSSAIN ALI *v.* GOBIND DASS.

[I. L. R. 17 Calc. 840

INTERROGATORIES—*concluded.*

2.—*Civil Procedure Code (Act XIV of 1882), ss. 121, 136—Interrogatories, omission to answer, effect of—Practice.*] Omission to answer interrogatories, delivered after leave granted under s. 121 of the Civil Procedure Code, does not render the party so omitting to answer liable to have his defence struck out under s. 136 of the Code. *Lalla Debi Pershad* v. *Santo Pershad*, I. L. R. 10 Calc. 505, overruled. PREM SUKH CHUNDER *v.* INDRO NATH BANERJEE.

[I. L. R. 18 Calc. 420

IRREGULARITY.

See CASES UNDER SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

See CASES UNDER SALE FOR ARREARS OF REVENUE — SETTING ASIDE SALE—IRREGULARITY.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE —IRREGULARITY.

—— in criminal trial.

See CASES UNDER CRIMINAL PROCEEDINGS.

See JOINDER OF CHARGES.

[I. L. R. 14 All. 502

[I. L. R. 20 Calc. 413

See JUDGMENT—CRIMINAL CASES.

[I. L. R. 21 Calc. 121

IRRIGATION CHANNELS.

See RIGHT TO USE OF WATER.

[I. L. R. 16 Mad. 333

ISSUES.

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See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 18 Calc. 647

——, Omission to decide—

See SPECIAL APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—ISSUES.

[I. L. R. 16 Bom. 545

——, Preliminary issue.

See COSTS—SPECIAL CASES—PRELIMINARY ISSUE.

[I. L. R. 20 Calc. 762

——, Framing fresh issue on appeal.

See. DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[I. L. R. 15 Mad. 15

See GRANT—RESUMPTION OR REVOCATION OF GRANT.

[I. L. R. 14 Mad. 431

ISSUES—*continued.*

——, Reference of, for determination.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES.

[I. L. R. 15 All. 315

See INJUNCTION—SPECIAL CASES—OBSTRUCTION TO RIGHTS OF PROPERTY.

[I. L. R. 16 Bom. 533

(1) FRESH OR ADDITIONAL ISSUES.

1.—*Guardian, power of, to make contract to bind minor—Alteration of case and raising fresh issues on appeal.*] Upon the death of an *ijaradar*, his mother and widow, as managers under his will, remained in possession of the land leased. Subsequently a son was adopted to him by the widow and succeeded to his estate. The lease having expired, a renewal for five years was taken by the managers, but was surrendered before that period elapsed, during the minority of the son, against whom, on his attaining full age, this suit was brought by the lessor to recover three years' rent of the renewed *ijara*. The contract of the adoptive mother and guardian was not personally binding upon the adopted son, and had not been ratified by him after attaining full age. It did not purport to deal with the estate to which he afterward succeeded, but was entered into by the managers in their own names:—*Held*, that the case, as originally made in the plaint and raised by the issues framed in the Court of First Instance which covered a wider ground, *viz.*, that the son was personally bound by the contract as being beneficial to him, and on the ground that he had ratified it after attaining full age, could not be altered in appeal into what would be a wholly different claim and raise entirely new issues, *viz.*, that the managers, having power under the will, had charged the estate with the rent of the *ijara*, and that such charge remained upon it in the possession of the heir, who was liable to the extent of the assets received by him. The latter would have been in fact a new suit. *Held*, also, that the suit, even if treated as one against the respondent in regard to the estate, could not be sustained. The case that arose in *Hanoomanpersaud Panday* v. *Munraj Koonweree*, 6 Moo. I. A. 393, distinguished. INDUR CHUNDER SINGH *v.* RADHA KISHORE GHOSE.

[I. L. R. 19 Calc. 507

[L. R. 19 I. A. 90

2.—*Civil Procedure Code, ss. 566, 567—Framing a new issue by the Appellate Court—Evidence recorded in one suit admitted by consent at the hearing of another—Appellate Court, power of.*] In the Court of First Instance the appellant, upon the title of a sister's son, was one of the plaintiffs who obtained a decree for an inheritance, the suit having been heard at the same time with another, in which relations of the deceased owner, alleging themselves to be of the same *gotra* with him, also obtained a decree as his heirs. Evidence in the latter suit was received in that of the appellant by consent of parties, both suits having been

ISSUES—*concluded.*

(1) FRESH OR ADDITIONAL ISSUES—*concld.*

brought against the same defendant, whose title, as widow of a son alleged to have been adopted by the last owner, was set up in both, but was not proved. Appeals having been filed in both suits, in that brought by the sister's son a new issue was framed by the Appellate Court, under s. 566, Civil Procedure Code, as to whether he was entitled as nearest of kin, or was excluded by the other claimants, whose suit was, at that time, compromised:—*Held*, that, after what had taken place in regard to both suits the Appellate Court could frame this issue, although it was new, and had not been raised by the defendant's written answer. With reference to the evidence in the one suit having been imported as a whole into the other at the first hearing, and the admission of evidence upon the trial of the new issue, it was *held*, that the parties intended that the evidence should be admitted, and that no irregularity had taken place materially affecting the decree of the High Court, which dismissed the suit of the sister's son on return made under s. 567. CHANDI DIN *v.* NARAINI KUAR.

[I. L. R. 14 All. 366

JAGHIR.

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R. 15 Bom. 222

JAINS.

See HINDU LAW—INHERITANCE—SPECIAL LAWS—JAINS.

[I. L. R. 16 Bom. 347

JALKAR.

See CASES UNDER FISHERY, RIGHT OF.

JETTISON.

See SHIPPING LAW.

[I. L. R. 17 Calc. 362

[L. R. 16 I. A. 240

JOINDER OF CAUSES OF ACTION.

See MULTIFARIOUSNESS.

[I. L. R. 12 All. 110

[I. L. R. 14 Mad. 103

[I. L. R. 16 Bom. 608

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.

[I. L. R. 19 Calc. 615

JOINDER OF CHARGES.

See CRIMINAL PROCEEDINGS.

[I. L. R. 20 Calc. 537

1.—*Criminal Procedure Code*, 1882, *ss.* 235, *and* 239 —*Offences committed by different accused against different persons at different times—Joint trial.*] If, in any case, either the accused are likely to be

JOINDER OF CHARGES—*continued.*

bewildered in their defence by having to meet many disconnected charges, or the prospect of a fair trial is likely to be endangered by the production of a mass of evidence directed to many different matters and tending by its mere accumulation to induce an undue suspicion against the accused, then the propriety of combining the charges may well be questioned. The four accused, who were members of the Dharwar Police Force, were charged with ill-treating the complainant *H*, his wife *R*, and his son-in-law *Y*, during the course of a Police investigation into a case of theft. They were committed for trial for the following offences:—(1) All the accused for an offence under s. 330, Penal Code, the charge covering several acts of violence alleged to have been committed against *H* during his confinement, which forms the subject of the second head of the charge. (2) All the accused for an offence under s. 348, Penal Code, committed against *H* between the 5th and the 18th January 1889. (3) Accused Nos. 1 and 3 for an offence under s. 348, Penal Code, committed against *R* on the 15th January 1889. (4) Accused No. 3 for an offence under s. 330, Penal Code, committed against *R* on the 14th January 1889. (5) All the accused for an offence under s. 330, Penal Code, committed against *Y* between the 15th and 23rd January 1889. (6) All the accused for an offence under s. 348 committed against *Y* during the same period. (7) Accused Nos. 1, 2 and 3 for an offence under s. 346, Penal Code, committed against *Y* between 8th February and 9th March 1889. The accused were committed to the Court of Sessions in two separate cases. The Sessions Judge tried both cases together under ss. 235 and 239 of the Code of Criminal Procedure (Act X of 1882), as the same four persons were accused in both cases and "were charged with different offences committed in what was virtually one transaction, namely, a Police investigation into an alleged theft." The accused were convicted of the offences charged, and sentenced to various terms of imprisonment:—*Held*, reversing the convictions and sentences, that the combination of the two cases necessarily prejudiced the accused by making it possible for the prosecution to bring forward a mass of evidence at the trial relating to many matters, some only remotely connected with relevant questions which must to some extent have had the effect of embarrassing and confusing the accused:—*Held* also, that all the several acts of violence alleged to have been committed against *H* during his illegal confinement could be rightly regarded as constituting a single transaction. But the act of violence said to have been committed against *R* at a different place could not be regarded as a part of that transaction. Nor was the wrongful confinement of *R* by accused Nos. 1 and 3 on the 15th January a part of the transaction constituted by the hurt caused to her by accused No 3 on the previous day. In the same way all acts of hurt caused to *Y* during his first period of wrongful confinement would with the confinement form a part of the same transaction; but the second period of confinement, which was said to have commenced some time after the termination of

JOINDER OF CHARGES—*concluded.*

the first period of confinement would be a separate transaction. QUEEN-EMPRESS *v.* FAKIRAPA.

[I. L. R. 15 Bom. 491

2.—*Criminal Procedure Code, ss.* 233, 234, *and* 537—*Trial of separate offences and accused together—Irregularity in criminal trial.*] Where four accused were at one and the same trial tried for offences of murder and robbery committed in the course of one transaction, and for another robbery committed two or three hours previously and at a place close to the scene of the robbery and murder:—*Held*, that the trial of these separate offences together, though an error or irregularity within the meaning of s. 537 of the Code of Criminal Procedure, would not necessarily render the whole trial void. QUEEN-EMPRESS *v.* MULUA.

[I. L. R. 14 All. 502

3.—*Criminal Procedure Code* (*Act X of* 1882), *ss.* 233, 234, 235, *&* 537—*Separate charges for distinct offences—Using forged documents—Charges for using eleven forged documents in three sets on three separate occasions—Irregularity in criminal trial.*] The accused was charged with using as genuine eleven forged receipts which were put in by him in sets on three separate occasions, each set with a written statement in three suits pending against him. A charge was framed against him in respect of the using of each set of receipts, and he was tried on these three charges and convicted and sentenced. On appeal it was contended that a separate charge should have been framed in respect of each of the documents, as the using of each document constituted a distinct and separate offence, and that, consequently, the trial was illegal and should be set aside, the accused having been tried for more than three offences in one and the same trial:—*Held*, that as the "using" charged was the putting in of each set of documents with the respective written statements in the three suits, and as there was nothing to show that any of the documents had been used at any other time, there was only one using in respect of each set of documents, and that there was, therefore, no valid ground for questioning the conviction. QUEEN-EMPRESS *v.* RAGHU NATH DAS.

[I. L. R. 20 Calc. 413

JOINDER OF PARTIES.

See MULTIFARIOUSNESS.

[I. L. R. 12 All. 110

[I. L. R. 16 Bom. 608

See CASES UNDER PARTIES—ADDING PARTIES TO SUITS.

See SPECIFIC RELIEF ACT, S. 9.

[I. L. R. 15 All. 384

—*Civil Procedure Code, ss.* 44, 45—*Misjoinder—Suit for debt or mortgage and for arrears of rent.*] A suit for recovery of a mortgage-debt, with an alternative prayer for sale of the mortgaged property, is not a suit for the recovery of immoveable property within the meaning of s. 44 of the Civil Procedure Code. A claim for arrears of rent therefore can be joined with a claim for recovery of a mortgage-debt with such an alternative prayer without leave of the Court first obtained. GOVINDA *v.* MANA VIKRAMAN. MANA VIKRAMAN *v.* GOVINDA.

[I. L. R. 14 Mad. 284

JOINT DECREE.

See EXECUTION OF DECREE — JOINT DECREES, EXECUTION OF, AND LIABILITY UNDER.

[I. L. R. 15 Mad. 343

JOINT DECREE-HOLDERS.

See LIMITATION ACT, 1877, S. 7.

[I. L. R. 13 Mad. 236

See LIMITATION ACT, 1877, S. 8.

[I. L. R. 13 Mad. 236

See CASES UNDER LIMITATION ACT, 1877, ART. 179—JOINT DECREE—JOINT DECREE-HOLDERS.

JOINT FAMILY.

See ARMS ACT, S. 19.

[I. L. R. 15 All. 129

See GUARDIAN—APPOINTMENT.

[I. L. R. 19 Calc. 301

See CASES UNDER HINDU LAW—JOINT FAMILY.

See CASES UNDER MALABAR LAW—JOINT FAMILY.

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING.

[I. L. R. 18 Calc. 86

JOINT FAMILY BUSINESS.

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

[I. L. R. 14 Bom. 189

JOINT FAMILY REPRESENTATIVE FOR VOTING PURPOSES.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[I. L. R. 19 Calc. 192, 195 note, 198

JOINT LANDLORDS.

See CASES UNDER BENGAL TENANCY ACT, S. 188.

JOINT MORTGAGORS.

See LIMITATION ACT, 1877, ART. 148.

[I. L. R. 14 All. 1

JOINT PROPERTY.

See CASES UNDER CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

[I. L. R. 17 Calc. 33

[I. L. R. 18 Calc. 151

See CASES UNDER HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &C.

See PARTIES—PARTIES TO SUITS—PARTITION, SUIT FOR.

[I. L. R. 17 Calc. 906

See SALE IN EXECUTION OF DECREE—JOINT PROPERTY.

[I. L. R. 15 Bom. 13

See SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHTS OF.

[I. L. R. 14 All. 190

———, Suit for share of—

See CASES UNDER LIMITATION ACT, 1877, ART. 127.

———, Suit to set aside attachment of—

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[I. L. R. 12 All. 209

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(1) CIVIL CASES.

1.—*Judgment of Small Cause Court, what should be contained therein—Civil Procedure Code, s. 203—Revision—Civil Procedure Code, ss. 562, 622, & 647—Provincial Small Cause Court (Act IX of 1887), s. 25.*] Section 203 of the Code of Civil Procedure does not relieve the Judge of a Small Cause Court from the necessity of giving some

JUDGMENT—*continued.*

(1) CIVIL CASES—*concluded.*

indication in his judgment that he has understood the facts of the case in which such judgment is given. Where a judgment in a Small Cause Court suit stated merely that the suit was dismissed for reasons given in the Judge's decision in another suit, and the judgment in the suit so referred to was in the following words:—"Claim for recovery of money lent with interest. Reply: Defendant pleads that he has paid the debt to the plaintiff. Issue: Has the defendant paid the debt claimed to the plaintiff? Finding: It is not proved that the defendant paid the debt to the plaintiff Ordered that the claim is decreed with costs":—*Held* that this was, in fact, no judgment at all, and the case must be remanded for re-trial on the merits under the analogy of s. 562 of the Code of Civil Procedure, read with s. 647. MALIK RAHMAT *v.* SHIVA PRASAD.

[I. L. R. 13 All. 533

2.—*Judgment of Appellate Court—Reasons for the decision—Civil Procedure Code*, 1882, *s.* 574.] Section 574 of the Code of Civil Procedure is imperative. Under that section the Appellate Court is bound to state the reasons for its decision. A Court of Appeal framed certain issues under s. 566 of the Code of Civil Procedure and remanded them for findings by the original Court. On the return of those findings, as neither party filed any objections, the Appellate Court accepted these findings, without giving any reasons for so doing, or even stating in its judgment whether it concurred in them or not, and confirmed the decree of the original Court:—*Held*, that the judgment of the Appellate Court was not a judgment according to law. BHAGVAN *v.* KESUR KUVERJI.

[I. L. R. 17 Bom. 428

(2) CRIMINAL CASES.

3.—*Criminal Procedure Code*, 1882, *ss.* 367 *and* 424—*Judgment, contents of—Omission to give reasons.*] A District Magistrate, in disposing of an appeal, recorded the following judgment:—"The affray was a faction fight between members of the two parties into which the society of Dhunshi seems to be split up. There is no good ground for doubting the justice of the Magistrate's finding that the two appellants took part in the affray, and that the party to which they belonged were the aggressors. The appeal is dismissed, and the conviction and sentence are confirmed":—*Held*, that this was not a judgment in accordance with ss. 367 and 424 of the Code of Criminal Procedure (Act X of 1882). IN RE SHIVAPPA BIN SHIDLINGAPPA.

[I. L. R. 15 Bom. 11

4.—*Form and contents of judgment—Criminal Procedure Code* (*Act X of* 1882), *ss.* 367 *and* 537.] A Sessions Judge in disposing of a criminal appeal recorded the following judgment:—"The appellants have been convicted of breaking into *H's* house at night, dragged *H's* wife to the fields and dishonoured her, though they did not have intercourse with her. I have read through

JUDGMENT—*concluded.*

(2) CRIMINAL CASES—*concluded.*

the evidence, and heard the appellant's pleader, and I think that the Deputy Magistrate was quite right to believe the evidence. The sentence of one year's imprisonment and Rs. 50 is not heavy. I dismiss the appeal." It was contended that this was not a judgment within the terms of s. 367 of the Code of Criminal Procedure:—*Held*, that having regard to the provisions of s. 537, it does not follow that, because the form of a judgment does not exactly comply with all the requirements of s. 367, it is not a valid judgment, and that as this judgment showed that the Sessions Judge had appreciated the point that the prosecution had to establish, *viz.*, the credibility of the evidence of the witnesses for the prosecution, and had expressed his opinion on that point, there being nothing to show that any other point was raised before him, it was not a case in which the High Court should exercise its revisional powers. *Kamruddin Dai* v. *Sonatun Mandal*, I. L. R. 11 Calc. 449; and *In the matter of the Petition of Ram Das Maghi*, I. L. R. 13 Calc. 110, referred to and commented on. ROHIMUDDI *v.* QUEEN-EMPRESS.

[I. L. R. 20 Calc. 353

5.—*Judgment of Appellate Court—Criminal Procedure Code* (*Act X of* 1882), *ss.* 367 *and* 421—*Appeal rejected without any reasons given.*] An Appellate Court on rejecting an appeal under the provisions of s. 421 of the Criminal Procedure Code need not give its reasons for the decision. RASH BEHARI DAS *v.* BALGOPAL SINGH.

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6.—*Irregularity—Magistrate passing sentence before finishing his judgment—Criminal Procedure Code* (*Act X of* 1882), *ss.* 366, 367 *and* 537.] A Magistrate on a charge of rioting passed sentence on the accused without delivering his judgment in open Court, the judgment (one in course of being written during the hearing of the case) being in fact not then completed. The case went on appeal to the Sessions Judge, who dealing fully with the evidence taken before the Magistrate, confirmed the conviction and sentence:—*Held per* PRINSEP and TREVELYAN, JJ., that the judgment of the Magistrate was not one in accordance with the law as laid down in s. 366 of the Criminal Procedure Code: but *held* by PRINSEP and O'KINEALY, JJ. (TREVELYAN, J., dissenting) that the irregularity was one contemplated by s. 537 of the Code, and not having occasioned any failure of justice, it did not necessitate a re-trial of the case. *Per* TREVELYAN, J.—The case was more than one of mere "error, omission or irregularity" within the meaning of s. 537: the judgment having been irregularly arrived at and pronounced, there was no "judgment" in accordance with law, and therefore no fair trial to which every accused person is entitled, the case ought therefore to be re-tried. DAMU SENAPATI *v.* SRIDHAR RAJWAR.

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[I. L. R. 12 All. 440

JUDICIAL OFFICERS, LIABILITY OF.

—*Judicial act within the limits of the officer's jurisdiction—Such act protected though done erroneously, illegally or not in good faith—"Jurisdiction."—Magistrate, jurisdiction of.*] Under Act XVIII of 1850, where an act done or ordered to be done by a judicial officer in the discharge of his judicial duties is within the limits of his jurisdiction, he is protected whether or not he has discharged those duties erroneously, irregularly, or even illegally, or without believing in good faith that he had jurisdiction to do the act complained of. Where the act done or ordered to be done in the discharge of judicial duties is without the limits of the officer's jurisdiction, he is protected if, at the time of doing or ordering it, he in good faith believed himself to have jurisdiction to do or order it. The word "jurisdiction" is used in Act XVIII of 1850 in the sense in which it was used by the Privy Council in *Calder* v. *Halket* 2 Moo. I. A. 293. It means authority or power to act in a matter, and not authority or power to do an act in a particular manner or form. A judicial officer who in the discharge of his judicial duties issues a warrant which he has authority to issue, though the particular form or manner in which he issues it is contrary to law, acts within, and not without, the limits of his jurisdiction in this sense. Where a Magistrate of the first class having sentenced an accused person to three years' rigorous imprisonment and Rs. 500 fine under ss. 379 and 411 of the Penal Code, and having issued a warrant purporting to act under s. 386 of the Criminal Procedure Code, for the levy of the fine by distress and sale of cattle belonging to the accused, sold such cattle before the date fixed for the sale, and in contravention of Form 37, Sch. V and s. 554 of the Code, and Form D in Ch. V of the Circular Orders of the High Court:—*Held*, that he was acting in the discharge of his judicial duty within his jurisdiction as a Magistrate of the first class; that, under such circumstances, it was immaterial that he did not in good faith believe himself to have jurisdiction to sell the property in the manner he did; and that the fact that he acted with gross and culpable irregularity did not deprive him of the protection afforded by Act XVIII of 1850. TEYEN *v.* RAM LALL.

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(1) QUESTION OF JURISDICTION.

(*a*) WHEN IT MAY BE RAISED

1.—*Objection as to jurisdiction, first taken in second appeal—Waiver of objection to jurisdiction.*] A suit of which the subject-matter was less than Rs. 2,500 was instituted in a Subordinate Court. The Subordinate Judge tried the suit and passed a decree, and an appeal against this decree was entertained and determined by the District Judge without objection taken that the Subordinate Court had no jurisdiction to hear and determine the suit. On second appeal the objection was taken as above:—*Held*, that the objection could not be waived but must prevail, and the plaint be returned for presentation in the proper Court. VELAYUDAM *v.* ARUNACHALA.
[I. L. R. 13 Mad. 273

(*b*) WAIVER OF OBJECTION TO JURISDICTION.

2.—*Waiver of want of jurisdiction—Civil Procedure Code, s. 25, order made under, without notice to the party not applying—Transfer of Civil Case.*] A suit for land was filed in 1883 in the Subordinate Court of Cochin. In 1884 the Government, by a notification under Act III of 1874, transferred the district where the land was situated from the jurisdiction of that Court to that of the Subordinate Court of Calicut, whereupon the plaintiff applied to the District Court to transfer the case to the file of the first mentioned Court under s. 25 of the Code of Civil Procedure. The District Judge granted the application without notice to the defendants. The defendants went to trial, and also preferred an appeal against the decree, which was passed in favour of the plaintiff, without objection to the jurisdiction of the Court. In execution of the above decree (which

JURISDICTION—*continued.*

(1) QUESTION OF JURISDICTION—*concld.*

(*b*) WAIVER OF OBJECTION TO JURISDICTION—*concluded.*

was affirmed on appeal) the plaintiff was obstructed. He, therefore, filed the present suit against the obstructors under the provisions of s. 331 of the Code of Civil Procedure, and they pleaded that the decree sought to be executed had been passed without jurisdiction:—*Held* (1) that the want of notice to the defendants of the application made under s. 25 of the Code of Civil Procedure was immaterial; (2) that the defect, if any, of the jurisdiction of the Court passing the decree had been waived by the defendants, and that the present defendants were precluded from availing themselves of it. SANKUMANI *v.* IKORAN.

[I. L. R. 13 Mad. 211

(2) CAUSES OF JURISDICTION.

(*a*) DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

3.—*Letters Patent*, 1865, *cl.* 12—"*Dwell*"—"*Carry on business*"—"*Personally working for gain.*"] The plaintiff claimed to be the *acharya* or high priest of the Vaishnav community and the Maharaj Tikait of Shri Nathji at Nathdwar in the territories of the Maharana of Oodeypore. In 1876 he was deported from the territories of His Highness, and his son, the defendant, had ever since been in charge of the shrine. The plaintiff alleged that at the time of his deportation he had money and valuables at Nathdwar which he had entrusted to his son; the defendant, for safe custody. He now sued to recover this property from the defendant. The defendant pleaded that the High Court of Bombay had no jurisdiction to try the suit. It appeared that the defendant's permanent residence was at Nathdwar, from which he was absent only when on pilgrimage or on tour. He had in Bombay an establishment called a *pedi* in which a *bhandari* or treasurer, a *munim*, and *mehtas* and servants were regularly employed. Into this *pedi* offerings made to the shrine of Shri Nathji by devotees were paid, as also offerings to another shrine at Nathdwar of which the defendant claimed to be the owner, and to a very small extent offerings to the defendant personally as the owner of such shrines. The defendant had similar establishments in other places in the Bombay Presidency. The offerings collected in them were transmitted to the Bombay *pedi* and dealt with there. The moneys from the Bombay *pedi* were transmitted to Nathdwar sometimes by means of *hundis* drawn at Nathdwar on the Bombay *pedi* and honoured by that *pedi*, and sometimes by articles being purchased for the defendant's use by the servants of the *pedi* in Bombay and sent to Nathdwar. In May 1888, the defendant agreed to purchase a house in Bombay for Rs. 1,18,500. Earnest-money (Rs. 10,000) was paid out of moneys in the Bombay *pedi*, and the employés of the *pedi* after the purchase lived in the house. Interest was paid on the unpaid purchase-money. In 1889, when the defendant visited Bombay, he lived in this house, but he sold it in the same year shortly before he returned to Nathdwar. The defendant had never been in Bombay until 1889. In that year, in accordance with the practice, he obtained from the British Resident at Meywar a permit to travel with an armed following to the places mentioned in the permit, one of which was Bombay. The journey was supposed to last for six months. The defendant left Nathdwar in February 1889, and after various stoppages reached Bombay on the 2nd April, and took up his quarters at the house above mentioned. The reason assigned for his coming to Bombay was that his devotees had asked him to come. When in Bombay his followers visited him, and he visited their houses on invitation. On these occasions he received offerings which in the aggregate amounted to about Rs. 75,000. These offerings were personal, and were not paid into the *pedi*. This suit was filed on the 3rd May 1889, while the defendant was in Bombay. Early in August he left Bombay and returned to Nathdwar. The plaintiff contended that the Court had jurisdiction under cl. 12 of the Letters Patent, 1865:—*Held*, that at the date of the institution of the suit the defendant was neither dwelling, nor carrying on business, nor personally working for gain, in Bombay, and that the Court had no jurisdiction. GOSVAMI SHRI 103 *v.* GOVARDHANLALJI.

[I. L. R. 14 Bom. 541

4.—*Foreigner carrying on business by agent.*] *Per* SARGENT, C. J:—Although it is true that a non-British subject who does not personally carry on business within the territorial limits of the Court does not make himself personally subject to the municipal law of British India, still, by establishing his business in British India, from which business he expects to derive profit, he accepts the protection of the territorial authority for his business, and his property resulting from it, and may be fully regarded as submitting to the Courts of the country. GIRDHAR DAMODAR *v.* KASSIGAR HIRAGAR.

[I. L. R. 17 Bom. 662

(*b*) CAUSE OF ACTION.

5.—*Leave to sue under cl.* 12 *of the Letters Patent*, 1865—*Amendment of plaint in cases in which leave to sue under cl.* 12 *is necessary—Part of cause of action arising outside the jurisdiction—Hundi, suit on—Suit by drawee within the jurisdiction against the drawer outside the jurisdiction.*] In suits for which leave to sue under cl. 12 of the Letters Patent, 1865, is necessary the plaint cannot be afterwards amended. The grant of leave must be taken to relate to the suit as put forward in the plaint on which leave is endorsed by the Judge accepting it. The grant of leave under cl. 12 of the Letters Patent, 1865, is a judicial act, which must be *held* to relate only to the cause of action contained in the plaint, as presented to the Court at the time of the grant.

JURISDICTION—*continued.*

(2) CAUSES OF JURISDICTION—*concluded.*

(*b*) CAUSE OF ACTION—*concluded.*

Such leave, which affords the very foundation of the jurisdiction, is not available to confer jurisdiction in respect of a different cause of action which was not judicially considered at the time it was granted. In respect of such a different cause of action, leave under cl. 12 cannot be granted after the institution of the suit; and, therefore, the Court cannot try such different cause of action, except in another suit duly instituted. In suits upon *hundis* drawn outside the jurisdiction upon drawees within the jurisdiction, part of the cause of action arises outside the jurisdiction, and leave to sue under cl. 12 of the Letters Patent, 1865, is, therefore, necessary for such suits. RAMPURTAB SAMRUTHROY *v.* PREMSUKH CHANDAMAL.

[I. L. R. 15 Bom. 93

In a later case the plaint was amended by the addition of another defendant after the leave to sue had been granted, and an appeal by the original defendant from that order was dismissed. FOOLIBAI *v.* RAMPRATAB SAMRATRAI.

[I. L. R. 17 Bom. 466

(3) SUITS FOR LAND.

6.—*Letters Patent, High Court, cl.* 12—*Suit for land out of jurisdiction—Suit for specific performance.*] A vendor, having obtained leave to sue under cl. 12 of the Letters Patent of 1865, sued in the High Court to enforce *inter alia* the specific performance of a contract entered into by the defendant for the purchase of certain land situated in the district of Burdwan, and in the alternative for damages:—*Held* that, as far as the above-mentioned objects of the suit were concerned, the suit was not one for land within the meaning of that clause. LAND MORTGAGE BANK *v.* SUDURUDEEN AHMED.

[I. L. R. 19 Calc. 358

7.—*Power of High Court to order sale of land situate outside jurisdiction—Mortgage of land outside jurisdiction—Suit for specific performance relating to land outside jurisdiction—Letters Patent,* 1865, *cl.* 12.] In a suit for specific performance of an agreement made in Bombay, but relating to land situate outside the original jurisdiction of the High Court, and to realise a mortgage-debt by sale of the said land:—*Held,* that the Court had jurisdiction to try the suit, and to order a sale of the mortgaged land. YASHVANTRAV HOLKAR (MAHARAJAH HOLKAR) *v.* DADABHAI CURSETJI ASHBURNER.

[I. L. R. 14 Bom. 353

8.—*Letters Patent, High Court, cl.* 12—*Suit for land out of jurisdiction—Suit to declare interest on land—Suit to have land discharged from mortgage.*] Where the plaintiff alleged that he executed a mortgage of certain land to the defendant for Rs. 10,000, that the defendant only paid him Rs. 1,000, and refused to pay the balance, and prayed that the mortgage contract might be declared void and the mortgage set aside and cancelled, or for damages:—*Held* that, so far as the suit sought to discharge the land from the obligation imposed on it by the mortgage it was a suit for land within cl. 12 of the Letters Patent, and the land being situate outside the local limits of the jurisdiction of the Court, the Court had no jurisdiction to try it. KANTI CHUNDER PAL CHAUDHRY *v.* KISSORY MOHUN ROY.

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JURISDICTION—*concluded.*

(3) SUITS FOR LAND—*concluded.*

9.—*Mortgage lien—Suit to recover mortgage-debt by sale of mortgaged property out of jurisdiction.*] A suit by a mortgagee to recover the mortgage-debt from the mortgagors personally, as well as by sale of the mortgaged property, is one falling within cls. (*c*) or (*d*) of s. 16 of the Code of Civil Procedure (Act XIV of 1882), and can only be instituted in that Court within the local limits of whose jurisdiction the mortgaged property is situate. A Court has no jurisdiction to entertain such a suit relating to property situate outside the local limits of its jurisdiction. VITHALRAO *v.* VAGHOJI.

[I. L. R. 17 Bom. 570

(4) ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.

10.—*Vice-Admiralty jurisdiction—Vice-Admiralty Regulations of* 1862—*Practice under Code of Civil Procedure—Procedure—Pleadings.*] In Vice-Admiralty cases, the effect of appearance, the mode of objecting to the jurisdiction, and the mode of questioning the validity of a pleading, are matters governed by a settled practice under the Code of Civil Procedure. The Privy Council rules issued under 2 & 3 Will. IV, c. 51, have no operation, except in case of suits *in rem* in which no appearance has been entered, and other matters to which the Procedure Code cannot be applied. The enactments and rules affecting the Vice-Admiralty jurisdiction reviewed and examined. *In the matter of the Ship "Champion,"* I. L. R. 17 Calc. 66, referred to. IN THE MATTER OF THE SHIP "FANNIE SKOLFIELD."

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[I. L. R. 17 Bom. 431

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[I. L. R. 18 Calc. 133, 146

(1) CASTE.

1.—*Civil Procedure Code, s.* 11—*Hindu Marriage Act (Act XV of* 1856), *s.* 5—*Hindu law, marriage—Widow re-marriage—Exclusion from temple—Excommunication.*] The plaintiff, who was a *Smarta* Brahman, but had married a widow (whose first marriage had not b en consummated), alleged that he had made a vow to present an offering in a certain temple, and that the defendants, who were the committee of the temple, had obstructed and prevented him from entering the inner shrine (where orthodox Brahmans usually make their offerings), asserting that he was disqualified to enter by reason of his having married a widow contrary to Hindu *shastras;* and he sued for damages for the above obstruction and imputation, for a declaration that he was entitled to enter the shrine as a Brahman, and for an injunction restraining the defendants from interfering with his exercise of this right:—*Held* (1) that the right claimed was of a civil nature and within the cognizance of the Civil Courts; (2) that the question to be determined was not a question of the plaintiff's legal *status*, since a Brahman widow is at liberty to re-marry under Act XV of 1856, but it was a question of caste *status* in respect of a caste-institution; (3) that in order to determine

JURISDICTION OF CIVIL COURT—*continued.*

(1) CASTE—*continued.*

the above question, the Courts must inquire (*a*) what was the usage of the temple as regards admission into the inner shrine for the purposes of worship at the date of the suit, or the presumable intention of the religious foundation as regards such admission, and (*b*) whether, according to such usage or presumable intention of the foundation, those who secede from the caste custom as to re-marriage of women are outside the class of beneficiaries as regards the right of admission into the inner shrine as above. VENKATACHALAPATI *v.* SUBBARAYADU.

[I. L. R. 13 Mad. 293

2.—*Suit relating to caste questions—Right of suit by bhakats of religious fraternity expelled by other members for re-admission into fraternity—Powers of fraternity to impose fine and cause expulsion until fine is paid—Cause of action.*] The plaintiffs were some of the *bhakats* or members of a *satra* or religious fraternity, and they claimed the right to enter the *kirtanghar* or prayer-hall, and perform their prayers and other rights therein. They alleged in the plaint that the management of the affairs of the *satra*, "including the distribution of honorarium and offerings and the appointment and dismissal of the *satria*," or head of the fraternity, was vested in the *samuha*, or entire body of *bhakats*, and that they and their forefathers had been from generation to generation in receipt of the honorarium and offerings, and had been performing the rites and ceremonies according to the custom of the *satra* until they had been obstructed and interfered with by the defendants in such performance, and had been expelled from the *kirtanghar*. The prayer of the plaint was that the plaintiffs' right to enter the *kirtanghar* to perform the said rites and ceremonies and to receive their share of the offerings might be established; that the *kirtanghar* from which they had been dispossessed might be made over to them for the purpose of such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance. The defendants, who were the *satria* and the other members of the fraternity forming the majority of the entire body of *bhakats*, denied the rights claimed by the plaintiffs as *bhakats*, and stated that the *satra* was governed by the *satria* and a select body of *bhakats*, that the plaintiff No. 1 had received *mantra* or spiritual initiation from one Saruram, contrary to the rules of the fraternity, and had been convicted, moreover, of a criminal offence, and a fine of Rs. 100 had accordingly been imposed on him and his partizans by the governing body of the *satra*, whose orders they had disobeyed by refusing to pay the fine, and they had, therefore, been excluded from entering the *kirtanghar;* and the defendants contended that the Civil Court had no jurisdiction in the matter, and that the suit was, therefore, not maintainable. The lower Courts *held* that the Civil Court could entertain the suit, and they made decrees practically ordering the admission of the plaintiffs to the *kirtanghar* on their complying

JURISDICTION OF CIVIL COURT—*continued.*

(1) CASTE—*continued.*

with the order imposing the fine:—*Held*, that the rules laid down in the English cases as to expulsion from clubs or voluntary associations which people are free to join or not, and where any one who joins may well be taken to be bound not only by its general rules, but also by any special orders made by its members with regard to him in accordance with those rules, are not applicable with regard to caste unions or religious fraternities in India, to which people belong not of choice but of necessity, being born in their respective castes or sects, and the consequences of exclusion from which are far more serious and affect a person's *status* in a far greater degree than those of expulsion from a club. In such religious castes or fraternities the protection of Courts of Justice, even though presided over by Judges of a different religious persuasion, against expulsion, is much more needed than in clubs or voluntary associations. Cases of expulsion from them were, therefore, cognizable by the Civil Courts, *Sudharam Patar* v. *Sudharam*, 3 I. L. R. A. C. 91; 11 W. R. 457; *Hopkinson* v. *Marquis of Exeter*, L. R. 529, 63; and *Dawkins* v. *Antrobus*, L. R. 17 Ch. D. 615, distinguished; *Gopal Gurain* v. *Gurain*, 7 W. R. 299; and *Ramkant* v. *Ram Lochan*, S. D. A. 1859, p. 535, followed. *Advocate-General of Bombay* v. *Haim Devakar*, I. L. R. 11 Bom. 185, not followed. *Held*, further, that even if the rules laid down in the English cases were applicable, they were subject to a qualification which leaves it open to a Court of Justice to interfere with the decision of a private association on grounds, one of which is that the decision is contrary to natural justice. The decision of the lower Courts therefore ordering the re-admission of the plaintiffs to the *kirtanghar*, on their complying with the order imposing the fine, was not such an interference with the decision of the domestic tribunal of the parties as is opposed to the cases cited as to clubs, &c., as it would have been contrary to natural justice for the fraternity to enforce such exclusion after the reason for it had ceased, and make the disqualification of the plaintiffs permanent. *Held*, on the statements in the plaint, that the plaintiffs had a cause of action, and the suit could not have been properly dismissed on the finding of fact by the lower Appellate Court that the plaintiffs' exclusion from the *kirtanghar* was justified by their refusal to pay the fine imposed on them. JAGANNATH CHURN *v.* AKALI DASSIA.

[I. L. R. 21 Calc. 463]

3.—*Infringement of caste rule—Defamation by caste resolution—Truth of allegation—A defence to civil suit for defamation—Privilege—Caste resolution depriving a member of caste of man-pan invitation—Sumptuary law inforced by caste—Bombay Regulation II of* 1827, *cl.* 21, *s.* 1—*Cause of action—Right of suit—Onus probandi.*] In the year 1887 some members of the Pathare Kshatria caste considered that the outlay in connection with the *munj*, marriage and other ceremonies, by the members of the caste, were unnecessarily and unreasonably large, and that this was the cause of ill-feeling in the caste. A meeting, purporting to be a meeting of the whole caste, was held at Malad, in Salsette, on the 5th June 1887. Several rules framed with the view of lessening these expenses were then passed. The fourth rule was as follows:—"The practice of bringing a *naikin* to sing in the *mundup* on the day of *munj* or marriage ceremony is to be put a stop to." The preamble to the rules contained the following clause:—"Every family in the caste is to act according to these rules, and if any transgression of these rules on the part of any one be proved, he shall be considered as an offender of the caste." Copies of these rules and their preamble, together forming "the resolution," were printed and sent to the various divisions of the caste with a letter. The letter expressed the hope that the various sections would take steps to prevent the rules being transgressed. The plaintiff and the defendants belonged to the Girgaum section of the caste. This section approved of the resolution and acted on it. In May 1888, the plaintiff's grand-nephew's *munj* was celebrated at the plaintiff's house, and the plaintiff, in breach of the above rules, employed a *naikin* to sing at it. On the 9th March 1889, *D* (defendant No. 6), who was secretary of the Girgaum section of the caste, wrote to the plaintiff, drawing his attention to his breach of the rules, and calling upon him to show cause, before the Girgaum section of the caste, why he should not be liable to censure, and why the *man-pan* invitation to him by the caste should not be stopped. A correspondence then took place between the plaintiff and *D*, in which the plaintiff alleged that the rules in question had not been laid down by the whole body of the caste, and that they were frequently transgressed. He declined to pay any attention to communications on the subject. A meeting of the Girgaum section of the caste was then held, at which twenty-two members were present, and a resolution was passed, declaring that the plaintiff had transgressed the caste rules, and depriving him of the *man-pan* invitation by the caste until a contrary resolution should be arrived at by the *Chargaum* and *Desh*. It was also ordered that this resolution should be communicated to the *Chargaum* (local divisions of the caste) and *Desh* (head-quarters of the caste), which subsequently accepted and approved of the resolution, which thus became known to the whole caste. The defendants were among the twenty-two members of the Girgaum section of the caste who passed the resolution. The plaintiff sued them claiming Rs. 5,000 damages alleging that they had passed the said resolution and circulated it among the caste, and complaining that they had "attempted to carry out the said resolution by preventing the usual *man-pan* invitation being sent to the plaintiff, and the depriving of the plaintiff of this invitation is equivalent to excommunicating him from his community":—*Held*, that the circumstances, even assuming that the defendants were actively instrumental in getting the resolution carried, did

JURISDICTION OF CIVIL COURT—*continued.*

(1) CASTE—*concluded.*

not constitute a cause of action of which the Court could take cognizance. The plaintiff had not been libelled by the publication of the resolution. The facts stated in the resolution were all true, and the publication of true statements regarding an individual does not constitute a cause of action in a Civil Court, though, if the publication be unjustifiable, it may be an offence against the provisions of the Penal Code. The occasion, also, of the publication was privileged. The defendants were justified in informing the caste-fellows of the matter relating to the caste, which it was for the common interest of the caste to know. So, far, therefore, as the suit was a suit for libel or defamation it failed: *Held*, also, that the fact that the defendants had been actively instrumental in passing the resolution depriving the plaintiff of his *man-pan* did not constitute a cause of action. The right to the invitation was not a legal right. It was a social privilege which caste usages only entitled a casteman to receive, and the caste was the only tribunal to which a casteman deprived of that privilege could resort. The question was a caste question unconnected with property or legal right. *Held*, also, that the fact that the rule which the resolution enforced might be, in fact, *ultra vires* and one which the caste could not validly pass, did not operate to give the Court jurisdiction. As long as a caste in passing a rule confines the enforcement of it to social caste sanctions, and does not seek to deprive a man of property or legal rights for disobeying it, the Court has no jurisdiction to enquire into the nature of the rule. The Court cannot dictate to the caste what rules it shall and what it shall not lay down for its guidance. The rule in question was a sumptuary rule, and there was no reason why the caste should not enact it if it pleased. Among the issues raised by the defendant on the pleadings were the following:—*viz.* (3) whether the rules were not duly approved and adopted by the caste; and (6) whether the publication of the resolution was not privileged. It was contended for the plaintiff that the burden of proving these issues was on the defendant, and that he (the plaintiff) might reserve his evidence on them until the defendant had given evidence upon them. *Held*, that the *onus* of showing that the rules were not properly passed, lay on the plaintiff. RAGHUNATH DAMODHAR *v.* JANARDHAN GOPAL.

[I. L. R. 15 Bom. 599

(2) CUSTOMARY PAYMENTS.

4.—*Act XI of 1852, s. 7—Suit for a declaration that plaintiff was kadim naik, and that defendant was not entitled to any payment from him in respect of the Government revenue payable by the plaintiff—Inamdar of the village—Government not a party.*] In a suit for a declaration that the plaintiff was the *kadim naik* of a particular village, and that the defendant, who was the *inamdar* of the village, was not entitled to levy any contribution from the plaintiff in respect of the sum which the defendant had to pay to the Government as

JURISDICTION OF CIVIL COURT—*continued.*

(2) CUSTOMARY PAYMENTS—*concluded.*

agreed upon between him and the Government, the lower Court dismissed the claim for want of jurisdiction under s. 7 of Act XI of 1852 and for non-joinder of Government as a party:—*Held*, reversing the decree of the lower Court, that the question involved in the case being whether the plaintiff was a *kadim naik* as regards the defendant, the suit was not barred by s. 7 of Act XI of 1852, the object of which is confined to providing a summary mode of disposing of claims to exemption from payment of the revenue as against Government. *Held*, further, that Government was not a necessary party to such a suit. IRAPA BIN MALAPA NAIK *v.* APASAHEB IRBASAPA DESAI.

[I. L. R. 16 Bom. 649

(3) MAGISTRATES' ORDERS, INTERFERENCE WITH.

5.—*Declaration of title to land—Specific Relief Act (I of 1877), s. 42—Criminal Procedure Code (Act X of 1882), s. 133—Order by Magistrate under s. 133 of the Criminal Procedure Code for removal of an obstruction standing upon certain land.*] A Magistrate made an order against the plaintiff, under s. 133 of the Criminal Procedure Code (Act X of 1882), for the removal of a certain *otta* standing in front of the plaintiff's shop as an obstruction to the public way. The plaintiff, thereupon, brought this suit against the Secretary of State for India in Council for a declaration that the land on which the *otta* stood was his property and not that of the Government. It was contended that the jurisdiction of the Court to make the declaration prayed for was taken away by the last clause of s. 133, which provides that "no order made by a Magistrate under this section shall be called in question in any Civil Court:"—*Held* that the Magistrate's order under this section was not a conclusive determination of the question of title. SECRETARY OF STATE FOR INDIA *v.* JETHABHAI KALIDAS.

[I. L. R. 17 Bom. 293

(4) OFFICES, RIGHT TO.

6.—*Madras Regulation VI of 1831, s. 3—Suit for a declaration as to land alleged to be nattamai maniyams—Jurisdiction of Revenue Courts—Res judicata—Civil Procedure Code, 1882, s. 13.*] In a suit to establish plaintiffs' title to certain land alleged by the defendants, who were the Secretary of State for India in Council and the *nattamaigar* of a certain village, to be *maniyam* land attached to the office of the second defendant, and previously held to be such by a Revenue Court in a suit under Regulation VI of 1831:—*Held*, it was not a suit which the Civil Court was precluded from entertaining by Regulation VI of 1831, nor was the decision of the Revenue Court one of a Court competent to decide the matter. The Civil Court, therefore, was not precluded either by Regulation VI of 1831, s. 3, or by the decision of the Revenue Court from granting the declaration prayed for. RAYUTHA KOUNDAN *v.* MUTHU KOUNDAN.

[I. L. R. 13 Mad. 41

JURISDICTION OF CIVIL COURT—*continued.*

(4) OFFICES, RIGHT TO—*continued.*

7.—*Suit in which the right to an office and to its emoluments is in dispute.*] A suit in which the only question for decision was, whether or not the plaintiff was the *aya* of a certain *muth*, and entitled as such to receive certain fees on the occasion of marriages, is a suit of a civil nature in which the right to an office and thereby to certain fees is in contest. Such a suit is cognizable by a Civil Court. Its decision in no way involves any interference in a caste question. GURSANGAYA *v.* TAMANA.

[I. L. R. 16 Bom. 281

8.—*Civil Procedure Code*, 1882, *s.* 11—*Suit for right to property and for office or emolument.*] The plaintiffs were some of the *bhakats* or members of a *satra* or religious fraternity, and they claimed the right to enter the *kirtanghar* or prayer hall, and perform their prayers and other rites therein. They alleged in the plaint that the management of the affairs of the *satra*, "including the distribution of honorarium and offerings and the appointment and dismissal of the *satria*," or head of the fraternity, was vested in the *samuha*, or entire body of *bhakats*, and that they and their forefathers had been from generation to generation in receipt of the honorarium and offerings, and had been performing the rites and ceremonies according to the custom of the *satra* until they had been obstructed and interfered with by the defendants in such performance and had been expelled from the *kirtanghar*. The prayer of the plaint was that the plaintiffs' right to enter the *kirtanghar* to perform the said rites and ceremonies and to receive their share of the offerings might be established; that the *kirtanghar* from which they had been dispossessed might be made over to them for the purpose of such performance, and that a prohibitory injunction might be granted enjoining the defendants not to obstruct them in such performance. The defendants, who were the *satria* and the other members of the fraternity forming the majority of the entire body of *bhakats*, denied the rights claimed by the plaintiffs as *bhakats*, and stated that the *satra* was governed by the *satria* and a select body of *bhakats*, that the plaintiff No. 1 had received *mantra* or spiritual initiation from one Saruram, contrary to the rules of the fraternity, and had been convicted, moreover, of a criminal offence, and a fine of Rs. 100 had accordingly been imposed on him and his partizans by the governing body of the *satra*, whose orders they had disobeyed by refusing to pay the fine, and they had, therefore, been excluded from entering the *kirtanghar*: and the defendants contended that the Civil Court had no jurisdiction in the matter, and that the suit was, therefore, not maintainable. The lower Courts held that the Civil Court could entertain the suit, and they made decrees practically ordering the admission of the plaintiffs to the *kirtanghar* on their complying with the order imposing the fine:—*Held*, that having regard to the prayer for possession of the *kirtanghar*, and to the allegations made in the plaint about the position and privileges of the *bhakats* and their rights to honorarium and offerings, and to the defendants' denial of those rights and of the plaintiffs' right to enter the *kirtanghar*, the suit must be regarded as one in which right to property and to an office, within the meaning of the explanation to s. 11 of the Civil Procedure Code, is contested, and therefore, notwithstanding that the honorarium and offerings were of trifling and merely nominal value, one of a civil nature and cognizable by the Civil Court. JAGANNATH CHURN *v.* AKALI DASSIA.

[I. L. R. 21 Calc. 463

(5) POTTAHS.

9.—*Madras Rent Recovery Act* (*Madras Act VIII of* 1865), *ss.* 3, 7, 87 — *Suit to enforce acceptance of improper pottah—Decree for rent.*] A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of *pottahs* and the execution of *muchalkas* by them, and to recover arrears of rent. The suits were filed more than thirty days after tender of the *pottahs* which were found to contain certain improper stipulations:—*Held*, that the Civil Court had jurisdiction to entertain the suit and to modify the *pottahs* where they were found to be improper, and to enforce the execution of corresponding *muchalkas*. *Held*, also, that the claim for rent should have been disallowed on the ground that the *pottahs* as tendered were improper *pottahs*—*Narasimma* v. *Suryanarayana*, I. L. R. 12 Mad. 481, distinguished. EASWARA DOSS *v.* PUNGAVANACHARI.

[I. L. R. 13 Mad. 361

10.—*Madras Rent Recovery Act* (*Madras Act VIII of* 1865), *ss.* 3, 7, 87—*Suit to enforce exchange of pottah and muchalka—Amendment of pottah.*] *Held* by COLLINS, C. J., MUTTUSAMI AYYAR and PARKER, JJ. (SHEPHERD, J., dissenting) that an ordinary Civil Court has jurisdiction to entertain a suit to enforce acceptance of a *pottah* and execution of a *muchalka*.—*Held*, further, that if the *pottah* which has been tendered is found not to be a proper one, such a Court cannot amend it and direct the tenant to execute a *muchalka* corresponding with it as amended, but can, in a suit properly framed for that purpose, pass a decree declaring what is a proper *pottah*. RAMAYYAR *v.* VEDACHALLA.

[I. L. R. 14 Mad. 441

(6) RELIGION.

11.—*Mahomedan religious customs—Civil Procedure Code, s.* 11—*Right of suit—Suit for injunction to restrain reading of the Kutbah.*] Certain Moplahs, described as "the *Moktessor* and *Jamats*" of a mosque, sued certain other Mahomedans, described as "members of the Puslar caste," alleging that the custom was for the defendants to attend the plaintiffs' mosque on Friday at the reading of the *kutbah*, and that the defendants

JURISDICTION OF CIVIL COURT—*continued.*

(6) RELIGION—*concluded*

had recently built another mosque a short distance off, and had "for two months been attempting to read the *kutbah* there." It was further alleged in the plaint that such reading of the *kutbah* was "quite contrary to the Mahomedan religion," and that the defendants nevertheless proposed to have the *kutbah* read, "whereby the *kutbah* or adoration conducted in our mosque will, according to religion, be fruitless." The prayer of the plaint was for an injunction, restraining the defendants from reading the *kutbah* in their mosque:—*Held*, that the plaint disclosed no cause of action. MAINE MOILAR *v.* ISLAM AMANATH.

[I. L. R. 15 Mad. 355

(7) RENT AND REVENUE SUITS, BOMBAY.

12.—*Bombay Revenue Jurisdiction Act* (*X of* 1876), *s.* 4 (*c*)—*Suit for redemption of mortgage—Sale of mortgaged land by Native Chief for arrears of assessment—Claim by purchaser against mortgagor and mortgagee.*] The plaintiff sued to redeem certain land mortgaged by him to the first defendant The second defendant claimed the land as owner, alleging that the mortgagor and mortgagee had failed to pay the assessment on the land to the Native Chief to whom it was due. The latter had accordingly sold it by public auction to realise the assessment, and he (defendant No. 2) had bought it. The Court of First Instance rejected the plaintiff's claim on the ground that the suit could not be entertained by a Civil Court under the provisions of the Revenue Jurisdiction Act (X of 1876) and the Land Revenue Code (Bombay Act V of 1879). On appeal the District Court reversed the decree and remanded the case for trial on the merits:—*Held*, confirming the order of the District Court, that Government having rendered no assistance in the proceedings for the realisation of the revenue by the Native Chief on which the defendant relied, the jurisdiction of the Civil Court was not taken away by s. 4 (*c*) of the Revenue Jurisdiction Act. MAHADU *v.* LAKSHMAN.

[I. L. R. 17 Bom. 681

(8) RENT AND REVENUE SUITS, N.-W.P.

13.—*Suit for declaration of proprietary title in property said to have been wrongfully distrained—Civil Procedure Code, s.* 11—*Act XII of* 1881 (*N.-W. P. Rent Act*), *ss.* 56, 83, 85, 93 (*f*)—*Distress.*] In execution of a decree against the tenants of certain zemindars, the plaintiff attached and sold certain trees upon the holding of the judgment-debtors, and the auction-purchaser in turn transferred them to the plaintiff, who obtained possession. Subsequently, one of the judgment-debtors vacated the land on which the trees were situate, and the zemindars let the land to another tenant. This last-mentioned tenant having fallen into arrears of rent, the zemindars, purporting to act under s. 56 of the N.-W. P. Rent Act (XII of 1881) distrained some of the trees of which the plaintiff was in possession under his purchase, sold them, and themselves bought them. The plaintiff

JURISDICTION OF CIVIL COURT—*continued.*

(8) RENT AND REVENUE SUITS N.—*continued.*

then brought a suit against the zemindars, paying for a declaration of his right to, and maintenance of, possession of the trees:—*Held*, that the plaintiff was entitled, under s. 11 of the Civil Procedure Code, to bring the suit in a Civil Court, and that the Civil Courts were not prevented from taking cognizance of it by ss. 83, 85, 93 (*f*) or any other provision of the N.-W. P. Rent Act (XII of 1881). SHANKAR SAHAI *v.* DIN DIAL.

[I. L. R. 12 All. 409

14.—*Suit to eject mortgagee of occupancy-tenant—N.-W. P. Rent Act* (*XII of* 1881), *ss.* 93, 94—*Limitation.*] A suit by the zemindar to eject the mortgagee of an occupancy-holding or his representatives in possession, does not fall within ss. 93 (*b*) and 94 of the N.-W. P. Rent Act, but is cognizable by a Civil Court under the rules of limitation applicable to suits in such Courts. MADHO LAL *v.* SHEO PRASAD MISR.

[I. L. R. 12 All. 419

15.—*Suit for declaration that tenants are shikmis and not occupancy-tenants, and that their holdings are plaintiffs' sir land—Act XIX of* 1873 (*N.-W. P. Land Revenue Act*), *s.* 241—*N.-W. P. Rent Act* (*XII of* 1881), *ss.* 10, 95(*a*).] The effect of s. 95 (*a*) and s. 10 of the N.-W. P. Rent Act (XII of 1881) is to deprive the Civil Courts of jurisdiction to take cognizance of any suit the object of which is to declare, as between the zemindar and tenants, the *status* of the tenants. A Civil Court has no jurisdiction to entertain a suit in which, the defendants being admittedly the tenants of the plaintiffs, the plaintiffs pray for a declaration that certain entries of the defendants in the revenue records as occupancy-tenants, and certain orders of the Revenue Courts maintaining those entries, be set aside, and that the defendants are *shikmis* and not occupancy-tenants, and that the land in question is the plaintiffs' *sir* land. Such a suit cannot be brought within the Civil Court's jurisdiction by dropping all the reliefs claimed except the last-mentioned declaration, that being merely of importance as incidental to the previous ones, and as a round-about mode of obtaining a declaration that the defendants are not the plaintiffs' occupancy-tenants. *Per* STRAIGHT, J.—The suit might also be considered as one to set aside orders passed by the Settlement Officer in the discharge of his duty for the purpose of correcting the *jamabandi* as a part of the record of rights, and thus the jurisdiction of the Civil Court was barred by s. 241 of the N.-W. P. Land Revenue Act (XIX of 1873). MAHESH RAI *v.* CHANDAR RAI.

[I. L. R. 13 All. 17

16.—*Question of title arising on an application for partition, how to be determined—N.-W. P. Land Revenue Act* (*XIX of* 1873), *s.* 113.]—If a Revenue Court in disposing of an application for partition determines a question of title, it must,

JURISDICTION OF CIVIL COURT—*continued.*

(8) RENT AND REVENUE SUITS, N.-W. P. —*continued.*

in so doing, act in conformity with the provisions of s. 113 of Act XIX of 1873. If it disposes of the application otherwise than in the manner contemplated by s. 113, its proceedings are *ultra vires*, and will not debar the parties from suing in a Civil Court for a declaration of their right to partition. NASRAT-ULLAH *v.* MUJIB-ULLAH.

[I. L. R. 13 All. 309

17.—*Suit for ejectment against occupancy-tenant and his mortgagee—N.-W. P. Rent Act (XII of 1881), s. 94.—Limitation.*] The plaintiff, a zemindar, sued an occupancy-tenant for ejectment under s. 93 (*b*) of the N.-W. P. Rent Act (XII of 1881), and to that suit one *C D*, a mortgagee of the occupancy-holding who had obtained a foreclosure decree against the occupancy-tenant, got himself made a party defendant under s. 112A of the Act. The pleadings, however, were not amended, and the suit proceeded to appeal before the District Judge:—*Held*, that under the above circumstances the suit as against *C D*, the intervening defendant (who, so far as the plaintiff was concerned, was a trespasser), was of a civil nature and triable by the Civil Court, and therefore subject to the ordinary rules of limitation as laid down in the Limitation Act, and not to the special limitation prescribed by s. 94 of Act XII of 1881. SRI KISHEN *v.* ISHRI.

[I. L. R. 14 All. 223

18.—*Occupancy-tenant — Suit by landholder against successor of occupancy-tenant for arrears of rent which accrued during the lifetime of his predecessors—Act XII of 1881 (N.-W. P. Rent Act), ss. 9, 93, cl. (a) 112A, 161.*] A suit against an occupancy-tenant in possession who has accepted the occupancy-holding, for arrears of rent not barred by limitation which accrued in the lifetime of the person from whom the right of occupancy has devolved upon him, is not cognizable by the Civil Court, but is exclusively cognizable by a Court of Revenue. So *held* by the Full Bench, MAHMOOD, J., dissenting. The following cases were referred to:—*Jyperkash* v. *Sheopurshad*, 1 N.-W. P. S. D. A. 1864, p. 230; *Mata Deen Doobey* v. *Chundee Deen Doobey*, 6 N. W. 118; *Mata Deen* v. *Chundee Deen*, 2 N. W. 54; *Wazir Muhammad* v. *Amanat Khan*, Weekly Notes, 1883, p. 172; *Bhikhan Khan* v. *Ratan Kuar*, I. L. R. 1 All. 512; *Ahmad-ud-din Khan* v. *Majlis Rai*, I. L. R. 5 All. 438; *Ashootosh Chuckerbutty* v. *Baneemadhub Mookerjee*, 1 Rev. Civ. and Cr. Rep. 26; *Benod Behary Mookhopadhya* v. *Beer Narain Roy*, 1 Rev. Civ. and Cr. Rep. 46; *Hossein Ali Beg* v. *Ashruff Ali Beg*, N.-W. P. S. D. A. 1865, p. 221; *Gopal Pandey* v. *Parsotam Das*, I. L. R. 5 All. 121; *Mahadeo Singh* v. *Bachu Singh*, I. L. R. 11 All. 224; and *Waris Ali* v. *Muhammad Ismail*, I. L. R. 8 All. 552. LEKHRAJ SINGH *v.* RAI SINGH.

[I. L. R. 14 All. 381

JURISDICTION OF CIVIL COURT—*concluded.*

(8) RENT AND REVENUE SUITS, N.-W. P. —*concluded.*

19.—*N.-W. P. Rent Act (XII of 1881) s. 95—Suit involving the determination of status of tennant.*] A Civil Court has no jurisdiction to entertain a suit, the decision of which necessarily involves the determination of the class of tenancy of one or other of the parties to it. *Mahesh Rai* v. *Chandar Rai*, I. L. R. 13 All. 17, referred to. SAKINA BIBI *v.* SWARATH RAI.

[I. L. R. 15 All. 115

20.—*N.-W. P. Rent Act, ss. 93, 95, cls. (m), (n) — Landholder and tenant — Jurisdiction of Revenue Court.*] No suit will lie against a landlord in a Civil Court for the wrongful dispossession of a tenant from a holding to which Act No. XII of 1881 applies. Where a plaint in a Civil Court alleges facts which, if true, would show that the dispute or matter involved in the suit was one to which s 93 or s. 95 of Act XII of 1881 would apply, the plaint should be rejected under cl. (*c*) of s. 54 of the Code of Civil Procedure, or possibly in some cases returned under s. 57 of the same Code. The plaintiffs, alleging themselves to be occupancy-tenants and to have been wrongfully dispossessed by their landlords, who had made a lease of the land in suit, sued the landlords and the lessees of such landlords for recovery of possession and for damages:—*Held*, that such suit was not cognizable by Civil Court, but was exclusively cognizable by a Court of Revenue. *Shimbhu Narain Singh* v. *Bachcha*, I L. R. 2 All. 200, approved. TARAPAT OJHA *v.* RAM RATAN KUAR.

[I. L. R. 15 All. 387

JURISDICTION OF CRIMINAL COURT.

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See APPEAL IN CRIMINAL CASES—ACTS.

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See OFFENCE COMMITTED ON HIGH SEAS.

[I. L. R. 14 Bom. 227

(1) GENERAL JURISDICTION.

1.—*Criminal Procedure Code, s. 188—Offence committed in foreign territory — Trial without certificate of the Political Agent—Magistrate who is also Political Agent, jurisdiction of.*] A District Magistrate instituted criminal proceedings in British India against a Native Indian subject of the Queen, in respect of offences under ss. 419, 467 and 114 of the Penal Code, said to have been committed by him in French territory, without a certificate under s. 188 of Criminal Procedure Code. The accused was committed to the Sessions Court:—*Held*, although the District Magistrate was the Political Agent who might have certified under Criminal Procedure Code, s. 188, the proceedings were void for want of the certificate, and the commitment should be quashed. QUEEN-EMPRESS *v.* KATHAPERUMAL.

[I. L. R. 13 Mad. 423

JURISDICTION OF CRIMINAL COURT —*concluded.*

(2) NATIVE INDIAN SUBJECTS.

2.—*Criminal Procedure Code (Act X of 1882), s. 188—Native Indian subject of Her Majesty—Offence committed by an alien outside British India—Jurisdiction of Courts in British India to try such an offence.*] The accused was Talati of Kalol in British territory. His family belonged to the village of Bakrol in the Baroda State. His father entered the service of the British Government and lived almost entirely at Kalol, but he does not appear to have given up his intention of returning to his family residence at Bakrol. The accused was born at Dubhai in the Baroda territory. He was educated partly at Kalol and partly at Baroda. He entered the Revenue Survey Department in the Panch Mahals. His services were lent by the British Government to the State of Cambay He was charged with taking bribes while serving at Cambay. He was tried and convicted by the First Class Magistrate of Ahmedabad within whose jurisdiction he was found and arrested. The Sessions Judge reversed the conviction, on the ground that the Magistrate had no jurisdiction to try the accused:—*Held*, that the accused was not a "Native Indian subject of Her Majesty" within the meaning of s. 188 of the Code of Criminal Procedure; and though as a "servant of the Queen" he was subject to punishment under s. 4 of the Penal Code, the Magistrate of Ahmedabad, in whose jurisdiction he was "found," had no jurisdiction under that section to try him for an offence committed in a foreign State. *Per* PARSONS, J.:—The expression "Native Indian subject of Her Majesty" in s. 188 of the Code of Criminal Procedure (Act X of 1882) must be construed strictly, and cannot be held to include "servants of Her Majesty." QUEEN-EMPRESS *v.* NATWARAI.

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JURISDICTION OF REVENUE COURT.

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(1) N.-W. P. RENT AND REVENUE CASES.

1.—*N.-W. P. Rent Act (XII of 1881), ss. 93 (g), 205—"Proprietor"—"Co-sharer."*] Where a *lambardar* brought a suit for arrears of land revenue

JURISDICTION OF REVENUE COURT —*concluded.*

(1) N.-W. P. RENT AND REVENUE CASES—*concluded.*

payable by the proprietors against several defendants of whom some were co-sharers and others mortgagees in possession:—*Held*, that such suit was one of the nature contemplated by s. 93 (*g*) of the N.-W. P. Rent Act, 1881, and was cognizable by a Court of Revenue as against all the defendants. LACHMAN SINGH *v.* GHASI.

[I. L. R. 15 All. 137

2.—*Set-off—Suit for rent.*] A Court of Revenue cannot entertain a claim to a set-off unless such claim, if made the subject of a suit, would fall within its jurisdiction:—*Held*, that in a suit in a Court of Revenue by a *lambardar* to recover rent, the defendant was not competent to plead as a set-off that certain arrears of *malikana* were due to him by the plaintiff. BENI MADHO *v.* GAYA PRASAD.

[I. L. R. 15 All. 404

(2) MADRAS REGULATIONS AND ACTS.

3.—*Madras Rent Recovery Act (Madras Act VIII of 1865), ss. 8, 9, 10—Suit for a pottah—Denial of tenancy by landlord—Question of title.*] In a summary suit brought under the Madras Rent Recovery Act to compel the defendant to give a *pottah* to the plaintiff for certain land which plaintiff claimed to hold from him, the defendant denied that the plaintiff was his tenant;—*Held*, that the Collector was bound to try the question so raised and not to refer the parties to a regular suit for its determination. NARAYANA CHARIAR *v.* RANGA AYYANGAR.

[I. L. R. 15 Mad. 223

JURY.

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[I. L. R. 17 Bom. 677

KIDNAPPING.

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 14 All. 25

—*Penal Code, s.* 361—*Taking by father of minor wife from her husband—Guardianship of wife.*] The husband of a Hindu girl of fifteen is her lawful guardian ; and if the father of the minor takes away the girl from her husband without the latter's consent, such taking away amounts to kidnapping from lawful guardianship, even though the father may have had no criminal intention in so doing. IN THE MATTER OF THE PETITION OF DHURONIDHUR GHOSE.

[I. L. R. 17 Calc. 298

LABOURER.

See ACT XIII OF 1859.

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LACHES.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 15 All. 84

LAND, ACQUISITION OF.

See BENGAL TENANCY ACT, s. 84.

[I. L. R. 18 Calc. 271

LAND ACQUISITION ACT (X OF 1870).

See BOMBAY CIVIL COURTS ACT, s. 16.

[I. L. R. 16 Bom. 277

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[I. L. R. 18 Calc. 99

——, Sale of mortgaged land under.

See TRANSFER OF PROPERTY ACT, s. 68.

[I. L. R. 13 Mad. 321

1.—s. 11.—*Ascertainment of value and tender of compensation—Land given as compensation—Madras Regulation II of* 1803, *s.* 44—*Darkhast rules—Collector, power of.*] The owner of certain land taken up under the Land Acquisition Act, after the amount of compensation had been fixed, conveyed her interest to the present defendant, who applied for the land now in dispute in lieu of compensation, it being then Government waste; and this application was granted and the deed of exchange executed. The plaintiff and another had previously applied under *darkhast* rules for the land now in dispute, but the Collector ordered the land to be placed in possession of the defendant. The Board of Revenue, however, directed that the land be made over to the prior *darkhastdars* on terms which were complied with, and they were put into possession. The plaintiff having been subsequently dispossessed by the defendant, now sued for a declaration of title and for possession :—*Held*, that the plaintiff was entitled to the land as against the defendant. There is no provision in the Land Acquisition Act under which land can be given as compensation, and the Collector acted beyond his powers both under that Act and under Madras Regulation II of 1803, s. 44, in authorizing the alienation of any land without the sanction of the Board of Revenue. NARAYANA *v.* RAMACHANDRA.

[I. L. R. 13 Mad. 485

LAND ACQUISITION ACT (X OF 1870), s. 11—*continued.*

2.—s. 11.—*Claim to share of compensation—Valuation in private transaction.*] The plaintiff, as heir to her husband, brought a suit, in which Government was not represented, for a declaration of title to a quarter share of the *jenm* value of land taken up under the Land Acquisition Act. It appeared that the plaintiff's husband had mortgaged his share of the land in question to the defendants' predecessor in title in 1872 by an instrument in which his share was valued at Rs. 375 :—*Held*, that the valuation of the plaintiff's husband's share in the instrument of 1872 was not binding on the plaintiff in the present suit. CHOMU *v.* UMMA.

[I. L. R. 14 Mad. 46

——, s. 15.

See APPEALS—ACTS—LAND ACQUISITION ACT.

[I. L. R. 16 Bom. 525

——, s. 19.—*Assessor, appointment of—Disqualifications in an assessor—Bias—Objections to assessor's appointment not raised in time—Waiver—Effect on minor of guardian omitting to raise objection—Assessor as witness—Mamlatdar—Superintendence of High Court.*] Certain land belonging to the applicant, a minor, was taken by the Municipality of Hubli under the Land Acquisition Act (X of 1870). The Mamlatdar of Hubli, who was an *ex-officio* member of the Municipal Committee, took part in the negotiations for the purchase of the land. He also gave evidence as to its value in the inquiry before the Collector. As the price offered by the Collector was not accepted by the applicant, the matter was referred to the District Judge, under s. 15 of the Act, for the purpose of determining the amount of compensation. On this reference the Mamlatdar acted as an assessor appointed by the Collector, and was also examined as a witness as to the value of the land. But no objection was taken to his acting as an assessor. The District Judge eventually upheld the Collector's award. On an application under s. 622 of the Civil Procedure Code (Act XIV of 1882) :—*Held*. that the award was bad. The Mamlatdar had, under the circumstances, a substantial interest in the matter, sufficient to disqualify him from acting as an assessor. *Kashinath v. Collector of Poona*, I. L. R. 8 Bom. 553, followed. *Held*, also, that the minor applicant was not estopped from objecting to the competency of the Mamlatdar by the fact that his guardian had not raised any such objection in the Court below, and might, therefore, be taken to have waived it.

LAND ACQUISITION ACT (X OF 1870), s. 19—*concluded.*

Assuming that there was a waiver, it could not bind the minor, as it was not for his benefit. *Held* further, that a person who is appointed an assessor under s. 19 of the Land Acquisition Act performs *quasi*-judicial functions, and is, therefore, incompetent to testify as a witness in the same proceedings. SWAMIRAO *v.* COLLECTOR OF DHARWAR

[I. L. R. 17 Bom. 299

1. — s. 22.—*Determination of amount of compensation—Assessors, non-appearance of—Claimant, non-appearance of—Pleader, non-appearance of.*] Where, in a compensation case before the Land Acquisition Court, neither of the assessors nor the pleader for the claimant appear on the day fixed for hearing, the Judge should not proceed with the case in their absence by confirming the Collector's award, but should give notice to the parties; and if they do not, within the time limited by s. 22 of the Land Acquisition Act, cause their assessors to attend or appoint others, the Court should appoint other assessors in the place of those who were not in attendance. IN THE MATTER OF THE PETITION OF KAMINI DASI *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 17 Calc. 380

2.—s. 22.—*Determination of amount of compensation—Assessor of claimant, non-appearance of—"Neglect to act"—Appointment of another assessor by Judge without notice to claimant.*] On the hearing of a reference in a Land Acquisition case to determine the amount of compensation to be awarded, the assessor duly nominated on behalf of the claimant was not present, owing to some misunderstanding as to the order of the Judge in an application by the claimant for an adjournment of the case made two days previously, and the other side objecting to any adjournment, the Judge called upon the pleader for the claimant to nominate another assessor on the claimant's behalf, which the pleader declined to do as one had been already duly nominated. The Judge thereupon himself nominated another assessor, and, proceeding with the case, confirmed the award of compensation by the Collector:—*Held*, assuming that the absence of the claimant's assessor amounted to a neglect to act, the Judge had no power to appoint another without seven days' notice to the claimant, and that the proceedings were consequently irregular and not in accordance with the Land Acquisition Act, and must be set aside. IN THE MATTER OF PEARSON *v.* COLLECTOR OF THE 24-PERGUNNAHS.

[I. L. R. 17 Calc. 383

1.—ss. 24, 25—*Compensation—Mode of determining the amount of compensation to be given—Land in vicinity of town where building is going on—Market-value at time of awarding compensation, meaning of.*] The recognized modes of ascertaining the value of land for the purpose of determining the amount of compensation to be allowed under the Land Acquisition Act (X of 1870) are—(1) If a part or parts of the land taken up has or have been previously sold, such sales are taken as a fair basis upon which, making all proper allowances for situation, &c., to determine the value of that taken. (2) To ascertain the net annual income of the land, and to deduce its value by allowing a certain number of years' purchase of such income according to the nature of the property. (3) To find out the prices at which lands in the vicinity have been sold and purchased, and making all due allowance for situation, to deduce from such sales the price which the land in question will probably fetch if offered to the public. In the case of land in the vicinity of a town where building is going on, it would be unjust to adopt the second of the above methods, if there is a fair probability of the owner being able, owing to its situation, to sell or lease his land for building purposes. The value of land should be determined, not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner can dispose of it. The market-value "at the time of awarding compensation" may fairly be taken to mean "at the time when proceedings under the Act are taken." IN THE MATTER OF THE LAND ACQUISITION ACT X OF 1870. IN THE MATTER OF MUNJI KHETSEY.

[I. L. R. 15 Bom. 279

2.—ss. 24, 25, and ss. 15, 42.—*Compensation—Mode of assessment—Antiquities not proved to have any market-value — Quarries — Persons interested in the land acquired.*] The Government having, under the Land Acquisition Act (X of 1870), commenced proceedings to acquire a plot of land containing granite quarries besides ancient temples and sculpture, a reference was made to the District Judge (ss. 15, 18) as to the amount of the compensation to persons interested in the land:—*Held* (1) with regard to the nature of the property that only the value of the stone quarries as yielding profit could form the subject of assessment, and the value of the antiquities could not; for, under the circumstances, no market-value could be assigned to the antiquities; (2) the right if not the only course of proceeding was to estimate the rent at which possibly the whole plot might be leased, on the basis of how much rent a portion of the plot when leased for quarries had in fact obtained for the zemindar; (3) to calculate the purchase-money, as the first Court had done, at twenty-five years of such rent was proper, and no reason appeared for reducing this number of years to fifteen; (4) though quarry men had been employed, and had earned money, on the plot, they were not interested therein, in the sense intended by the Act; and their earnings, in which the zemindar was not interested, could not enter into the question of compensation and increase the award; (5) under s. 42, fifteen per cent. was to be paid on the sum awarded. SECRETARY OF STATE FOR INDIA *v.* SHANMUGARAYA MUDALIAR.

[I. L. R. 16 Mad. 369

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LAND ACQUISITION ACT (X OF 1870) —*concluded.*

———, s. 39.—*Apportionment of compensation—Landlord and tenant.*] The mode of apportionment of compensation between landlord and tenant considered. DUNNE *v.* NOBO KRISHNA MOOKERJEE.

[I. L. R. 17 Calc. 144

———, s. 55.

See COLLECTOR.

[I. L. R. 16 Mad. 321

See DISTRICT JUDGE, JURISDICTION OF.

[I. L. R. 16 Mad. 321

LAND REGISTRATION ACT (BENGAL ACT VII OF 1876).

———, s. 7.—*Delimitation of land of adjoining proprietors—Correction of entry in register.*] On a claim for the correction of the entry of the names of proprietors in the general register of revenue-paying lands in a district kept in accordance with Bengal Act VII of 1876, the limits of the area of the estate had not been defined, further than by boundaries mentioned in the plaint, which were disputed by the defendants, who were the owners of land adjoining, and who had obtained from the revenue authorities an order for the entry now alleged to be incorrect. The properties were both parts of an ascertained number of *bighas*, forming a *chuckla*. The High Court, while affirming the decision of the Court below in the plaintiffs' favour, ordered a local enquiry, with a view to the accurate delimitation of their estate. This, with the subsequent decree, resulted in the area being defined therein by reference to a map made and marked by an Amin. This was not a just division; for, while it divided the *chuckla* so as to give the defendants their full share, it went beyond it, to make up the full area of the plaintiffs' share. Their Lordships therefore made a new order, calculated to secure the division of the whole *chuckla* in due proportions for the purposes of the entry in the register. HEMMUNI SINGH *v.* CAUTY.

[I. L. R. 17 Calc. 304

———, s. 78.

See LIMITATION ACT, 1877, s. 22.

[I. L. R. 19 Calc. 760

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[I. L. R. 19 Calc. 760

LAND REVENUE.

See SETTLEMENT — CONSTRUCTION OF SETTLEMENT.

[I. L. R. 17 Bom. 407

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See MADRAS RENT RECOVERY ACT, s. 3.

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[I. L. R. 17 Calc. 826

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[I. L. R. 17 Calc. 144

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[I. L. R. 15 Bom. 704

See CASES UNDER MADRAS RENT RECOVERY ACT.

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[I. L. R. 15 Bom. 177

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[I. L. R. 14 All. 185

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[I. L. R. 20 Calc. 249

See SERVICE TENURE.

[I. L. R. 14 Mad. 365

LANDLORD AND TENANT—*continued.*

(1) LIABILITY FOR RENT.

1.—*Occupancy-ryot dying intestate — Liability of the heirs of a deceased occupancy-ryot to pay rent—Surrender of holding—Bengal Tenancy Act (VIII of* 1885), *ss.* 5, 26, *and* 86.] The heirs of an occupancy-*ryot*, dying intestate, are liable to pay rent, whether they occupy the land or not, until they surrender the holding in the manner prescribed by s. 86 of the Bengal Tenancy Act, 1885. PEARY MOHUN MOOKERJEE *v.* KUMARIS CHUNDER SIRKAR.

[I. L. R. 19 Calc. 790

2.—*Occupancy tenant—Liability of holder of right of occupancy for arrears of rent which accrued in lifetime of his predecessor.*] An occupancy-tenant in possession who has accepted the occupancy-holding is liable to be sued for arrears of rent, not barred by limitation, which accrued in the lifetime of the person from whom the right of occupancy has devolved on him. LEKHRAJ SINGH *v.* RAI SINGH.

[I. L. R. 14 All. 381

3.—*Lease to one partner on behalf of himself and his co-partners—Suit for rent—Making co-partners parties—Use and occupation.*] When one partner *A* takes a lease of premises in his own name, though on behalf of the partnership, and with the assent of his partners *B* and *C*, *B* and *C* are not liable to be sued by the lessor for the rent reserved by the lease. A lease is not a mere contract; it is a conveyance, and effects a transfer of property. The lessee can only be the person named in the lease. If that person becomes a lessee on behalf of some one else—as he may do—the law regards him as a trustee for that other person, and does not consider that other person as the lessee, since there is no demise or conveyance to him. The covenant to pay rent may be made on behalf of another person, but, as far as the lessor is concerned, it must be deemed to be only on behalf of the pers n to whom the demise is made. Neither are *B* and *C* liable to be sued by the lessor as for use and occupation of the premises occupied by them. Having demised the property to *A*, the lessor had no power to suffer or permit any one to occupy the premises during the continuance of the lease, and, therefore, the foundation of a claim for use and occupation was necessarily wanting. RAGOONATHDAS GOPALDAS *v.* MORARJI JUTHA.

[I. L. R. 16 Bom. 568

4.—*Lease—Assignment by Official Liquidator of lease held by a Company in liquidation—Assignment not in writing registered—Transfer of Property Act, s.* 2 (*d*).] In the course of the winding up of a Company, the Official Liquidator, with the sanction of the Court, sold the remainder of a lease for a long term of years, reserving a rent, which was held by the Company. No written assignment was ever executed, but the Official Liquidator handed over the lease to the purchaser, who entered into possession. In a suit by the lessors against the purchaser for rent:—*Held* that

LANDLORD AND TENANT—*continued.*

(1) LIABILITY FOR RENT—*concluded.*

whether the assignment was invalid because not in writing and registered, or whether it fell within s. 2 (*d*) of the Transfer of Property Act (IV of 1882), the defendant, even if not liable as assignee in law of the lease, was liable for rent as for the use and occupation, and under such circumstances the rent fixed by the lease would be a fair basis for the amount to be decreed. GAYA PRASAD *v.* BAIJ NATH.

[I. L. R. 14 All. 176

(2) NATURE OF TENANCY.

5.—*Perpetual tenancy—Long possession—Presumption arising from such possession—Bombay Land Revenue Act (V of* 1879), *s.* 83—*Burden of proof.*] The plaintiff's predecessor in title acquired the lands in dispute in A. D. 1780. The defendants were in possession as tenants. They proved their possession so far back as 1812. But it did not appear that they were put in possession first in that year. There was no evidence either of the commencement or of the duration of their tenancy:—*Held*, that under s. 83 of the Bombay Land Revenue Code (Bombay Act V of 1879) the defendants' tenancy should be presumed to be perpetual, and that it lay on the plaintiff to prove the contrary. DAULATA *v.* SAKHARAM GANGADHAR.

[I. L. R. 14 Bom. 392

6.—*Tenure in property, proof of—Long possession at an invariable rent—Local usage or custom.*] A tenure in perpetuity cannot be established merely by evidence of long possession at an invariable rent, unless it appears that such tenancy may be so acquired by local usage. *Babaji v. Narayan*, I. L. R. 3 Bom. 340, referred to. NARAYANBHAT *v.* DAVLATA.

[I. L. R. 15 Bom. 647

7.—*Bombay Land Revenue Act (Bombay Act V of* 1879), *s.* 83—*Tenancy not more than forty years old—Tenancy not permanent.*] Section 83 of the Land Revenue Code (Bombay Act V of 1879) is applicably only when the evidence as to the commencement and duration of the tenancy is not forthcoming by reason of its antiquity, which, in the case of a tenancy at most only forty years old, there is no reason for presuming will be the case. KALIDAS LALDAS *v.* BHAIJI NARAN.

[I. L. R. 16 Bom. 646

8.—*Permanent tenancy—Right of occupancy—Undisturbed possession—Construction of grant—Conduct of parties.*] In a suit for ejectment brought by the trustee of a temple, the defendants set up a right of occupancy as permanent tenants. It appeared that the defendants' ancestor had held the village from the Collector (then in charge of the temple properties) under a lease which expired in 1831, when he offered to hold it for two years more. The Collector made an order that if the tenant would not hold the land at the existing rate permanently he should be required to give security for two years' rent. Two "permanent" *muchalkas* were subsequently taken from

LANDLORD AND TENANT—*continued.*

(2) NATURE OF TENANCY—*concluded.*

the tenant successively but they were returned as not being in proper form. No further document was executed, but the tenant and his descendants remained in undisturbed possession at the same rate of payment up to 1888. In that year the plaintiff sent a notice of ejectment to the then tenant, who, however, set the plaintiff at defiance and remained in possession till the present suit was brought in 1890:—*Held*, that it should be inferred that the defendants were in possession under a permanent right of occupancy. VARADARAJA *v.* DORASAMI.

[I. L. R. 16 Mad 131

9.—*Plea of permanent tenancy—Sheri and khata lands—Rights of khata tenants not holding under express contract, how proved—Evidence as to similar tenants in similar villages admissible—Custom—Mirasidars—Liability to enhancement of rent.*] In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (1) that they were permanent tenants; (2) that the plaintiff had no power to enhance; (3) that the enhancement by the plaintiff was unreasonable. The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a "well-known distinction between the *sheri* or private lands of an *inamdar* and the *khata* or *rayatwar* lands held by recognised tenants." The exercise of certain rights of transfer or inheritance, &c., were regarded as evidence of fixity of tenure at a reasonable rent. On second appeal by the plaintiff the High Court *held* that they were not bound by the findings of the Judge, as it did not appear that it was admitted that the distinction drawn between *sheri* and *khata* tenants was correct, or that every *khata* tenant, as such, exercised the rights described by the Subordinate Judge. In determining the rights of *khata* tenants who held under no express contract, the best evidence no doubt, if possible, would be the evidence of custom in the particular village in question, but evidence of similar tenants in similar villages would not be excluded. *Mirasidars* in an *inam* village cannot always claim to hold at a fixed rent. An *inamdar* can enhance their rents within the limits of custom. VISHVANATH BHIKAJI *v.* DHONDAPPA.

[I. L. R. 17 Bom. 475

(3) ALTERATION OF CONDITIONS OF TENANCY.

(*a*) ERECTION OF BUILDINGS.

10.—*Ejectment suit—Tenant expending money on the premises.*] In a suit for ejectment it appeared that the defendants and their father had occupied the premises in question for over forty years, and that the house, which had originally been a cow-house, had been altered by the defendants and converted into a dwelling-house. The District Judge found that as the plaintiff had allowed the defendants to rebuild and virtually

LANDLORD AND TENANT—*continued.*

(3) ALTERATION OF CONDITIONS OF TENANCY—*concluded.*

(*a*) ERECTION OF BUILDINGS—*concluded.*

erect a new house, it would not be equitable to allow him to eject them from it, and he accordingly refused the plaintiff a decree for ejectment, but gave him a decree against the defendants for three years' rent. On appeal to the High Court the decree was varied by directing that the plaintiff should recover possession of the land and house, there being no evidence that the defendants had entered on the land for building purposes or had built "in the hope or encouragement by the plaintiff of an extended term or an allowance for expenditure" (*Ramsden* v. *Dyson*, L. R. 1 H. L. at p. 170), and, consequently, the defendants had no equity against the plaintiff. ONKARAPA *v.* SUBAJI PANDURANG. SUBAJI PANDURANG *v.* ONKARAPA.

[I. L. R. 15 Bom. 71

11.—*Specific Relief Act* (*I of* 1877), *s.* 54, *cls.* (*b*), (*c*) — *Perpetual injunction — Injury to interest in immoveable property—Inapplicability of remedy by compensation—Erection of dwelling-house on agricultural land — Ameliorating waste*] A zemindar sued for an injunction to compel the defendant who held agricultural lands comprised in the zamindari with occupancy-rights, to demolish a dwelling-house which he had efected thereon for purposes not connected with agriculture, and to restrain him from altering the character of the land:—*Held*, that the plaintiff was entitled to the injunction sued for. RAMANADHAN *v.* ZEMINDAR OF RAMNAD.

[I. L. R. 16 Mad. 407

(4) TRANSFER BY TENANT.

12.—*Sub-letting—Sub-lessee, rights and liabilities of—Sale of lessee's interest, effect of.*] *B* held certain land as a lessee under *M*. The lease did not contain any covenant against sub-letting, or any forfeiture clause. *B* sub-let a portion of the land demised to *A*. *M* obtained a decree against *B* for arrears of rent, and in execution attached and sold the entire holding, including *A's* interest, as a sub-lessee:—*Held*, that the sale in execution did not affect the sub-lessee's interest in the land, or put an end to the sub-lease. VISHNU ATMARAM *v.* ANANT VISHNU.

[I. L. R. 14 Bom. 384

13.—*N.-W. P. Rent Act* (*XII of* 1881), *s.* 9—*Ex-proprietary tenant, power to sub-let—Right of occupancy.*] An ex-proprietary tenant can sublet the whole or any part of his occupancy-holding, and such a sub-letting is not forbidden by s. 9 of Act No. XII of 1881. KHIALI RAM *v.* NATHU LAL.

[I. L. R. 15 All. 219

14.—*N.-W. P. Rent Act* (*XII of* 1881), *s.* 9—*Occupancy-tenant, power of to sub-let—Perpetual lease by occupancy-tenant.*] The effect of a perpetual lease made by an occupancy-tenant of his occupancy-holding to a person not a co-sharer in

LANDLORD AND TENANT—*continued.*

(4) TRANSFER BY TENANT—*concluded.*

the right of occupancy considered. MAHESH SINGH *v* GANESH DUBE.

[I. L. R. 15 All. 231

15.—*Mortgage of occupancy-holding—"Act inconsistent with the purpose for which the land was let"—Suit to eject mortgagee in possession—N.-W. P. Rent Act (XII of* 1881), *ss.* 9 *and* 93.] A mortgage of his holding by an occupancy-tenant, under which the mortgagee obtains possession, is not an act "detrimental to the land" or "inconsistent with the purpose for which the land was let," within the meaning of s 93(*b*) of the N.-W. P. Rent Act (XII of 1881) An act detrimental to the land means an act which injures the land itself. An act inconsistent with the purpose for which the land was let, must be some such act as the making of a tank, or the altering the character of the land, as, for instance, turning it from agricultural land to building land. But a mortgage with possession, whether the possession is given at the time of the granting of the mortgage, or is obtained later by virtue of the mortgage, is a transfer within the prohibition of s. 9 of the N.-W. P. Rent Act. MADHO LAL *v.* SHEO PRASAD MISR.

[I L. R. 12 All. 419

16.—*Transfer of portion of mokurrari tenure—Bengal Tenancy Act (VIII of* 1885), *ss* 17, 18, *and* 88—*Rights of purchaser or transferee of tenure—Right of suit.*] There is nothing in s. 88 of the Bengal Tenancy Act to prevent a person who has purchased a share in a *mokurrari* holding from bringing a suit for a declaration of his right to that share and for possession of the same after setting aside a sale held in execution of a decree for rent to which he was not made a party. Sections 17 and 18 of the Bengal Tenancy Act recognize the transfer of a share of a holding, and enable the transferee to be regarded as one of the tenants in respect of the holding. MOHESH CHUNDER GHOSE *v.* SARODA PRASAD SINGH.

[I. L. R. 21 Calc. 433

(5) PROPERTY IN TREES, WOOD, &c.

17.—*Suit for possession of fallen wood of self-sown trees growing upon an occupancy-holding—Burden of proof.*] A zamindar claiming a right to the fallen wood of self-sown trees which had been growing on an occupancy-holding must prove some custom or contract by which he is entitled to take such wood. The English law as to ownership under similar circumstances cannot be applied, and (*sed quære*) there is no general rule in India to decide that there is a right in the landlord or a right in the tenant by general custom to the fallen wood of self-sown trees. NATHAN *v.* KAMLA KUAR.

[I. L. R. 13 All. 571

(6) ACCRETION TO TENURE.

18.—*Fazendari tenure—Encroachment of tenant added to the tenure.*] An encroachment made by a tenant on the property of his landlord—*e.g.*, by

LANDLORD AND TENANT—*continued.*

(6) ACCRETION TO TENURE—*concluded.*

a person holding under *fazendari* tenure—should not be presumed to have been made absolutely for his own benefit, and against his landlord, but should be deemed to be added to the tenure, and to form part thereof. *Gooroo Doss Roy* v *Issur Chunder Bose*, 22 W. R. 246, followed. ESUBAI *v* DAMODAR ISHVARDAS.

[I. L. R. 16 Bom. 552

19.—*Bengal Regulation XI of* 1825, *s.* 4 (*cl.* 1)—*Occupancy right—Jote tenure—Ryot.*] A ryot who has a right of occupancy is entitled to the benefit of s. 4 (cl. 1) of Regulation XI of 1825. *Gobind Monee Debia* v. *Dinobundhoo Shaha*, 15 W. R. 87; *Attimoollah* v. *Saheboollah*, 15 W. R. 149; and *Bhagabat Prasad Sing* v. *Durg Bijai Singh*, 8 B. L. R. 73; 16 W. R. 95, followed. *Finlay, Muir and Company* v. *Gopee Kristo Gossamee*, 24 W. R. 404, not followed. GOURHARI KAIBURTO *v.* BHOLA KAIBURTO.

[I. L. R. 21 Calc. 233

(7) FORFEITURE.

(*a*) BREACH OF CONDITIONS.

20.—*Condition restraining alienation—Alienation by act of law—Sale in execution of decree.*] By a clause in a lease it was stipulated that the lessee would not transfer the land leased to him, and that if he did so the sale was to be void. The land was sold to the defendants in execution of a decree obtained against the lessee:—*Held* that the land having been sold against the will of the lessee by the act of a Court, the lessee could not be said to have voluntarily transferred his interest. *Tamaya* v. *Timapa Ganpaya*, I. L. R. 7 Bom. 262, and *Subbaraya* v. *Krishna*, I. L. R. 6 Mad. 159, approved. NIL MADHAB SIKDAR *v.* NARATTAM SIKDAR.

[I. L. R. 17 Calc. 826

21.—*Forfeiture for non-payment of rent—Transfer of reversion—Transfer of Property Act (IV of* 1882), *s.* 6, *cl.* (*b*).] A condition in a lease providing that the landlord may re-enter on non-payment of rent is penal and will be relieved against, apart from the provisions of the Transfer of Property Act. *Semble*:—The transfer of the reversion based on a clause for forfeiture is not invalid by reason of Transfer of Property Act, s. 6, cl. (*b*). VAGURAN *v.* RANGAYYANGAR.

[I. L. R. 15 Mad. 125

(*b*) TRANSFER OF TENANCY.

22.—*Bengal Tenancy Act (VIII of* 1885)—*Occupancy-ryot transferring part of his holding without notice to the landlord—Forfeiture, ground of.*] *D* was an occupancy-ryot of the plaintiff, a 14 annas shareholder in a zemindari, and unknown to the plaintiff sold half of his holding to the sons of his brother. The plaintiff then sued *D* for arrears of rent. *D* pleaded that he could not be sued for the whole amount, as he was only in possession of half of the holding. Subsequently to that the rent was paid into the Collectorate by *D* and by his brother's sons. In a

LANDLORD AND TENANT—*continued.*

(7) FORFEITURE—*continued.*

(*b*) TRANSFER OF TENANCY—*concluded.*

suit by the plaintiff to eject *D* and his transferees on the ground that *D* had forfeited his rights by transferring half of his holding:—*Held*, that under the Bengal Tenancy Act (VIII of 1885) the sale or parting with the whole or part of a holding is not a ground of forfeiture. KABIL SARDAR *v.* CHUNDER NATH NAG CHOWDHRY.

[I. L. R. 20 Calc. 590

(*c*) DENIAL OF TITLE.

23.—*Denial by tenant of title of landlord—Bengal Tenancy Act (VIII of 1885), s. 178—Forfeiture completed before passing of Act.*] The plaintiffs, purchasers of a *mokurrari jama*, sued to eject the defendants, on the ground that they had in their written statement in a former suit for rent, which had been decided in the plaintiffs' favour, denied the plaintiffs' title, and had thereby forfeited their tenures. The denial took place in March 1885, before the Bengal Tenancy Act came into operation:—*Held*, that the forfeiture being complete before the passing of the Act, the case was not affected by s. 178 of that Act, and must be governed by the old law. Under the decided cases before the Bengal Tenancy Act such a denial by a tenant of his landlord's title created a forfeiture. *Satyabhama Dassee* v. *Krishna Chunder Chatterjee*, I. L. R. 6 Calc. 55, and *Ishan Chunder Chattopadhya* v. *Shama Churn Dutt*, I. L. R. 10 Calc. 41, referred to. But *semble*:—Since the passing of that Act, in any case to which it applies, there cannot be any eviction on the ground of forfeiture incurred by denying the title of the landlord, that not being a ground enumerated in the Act, and therefore expressly excluded by s. 178. DEBIRUDDI *v.* ABDUR RAHIM.

[I. L. R. 17 Calc. 196

24.—*Denial by tenant of landlord's title—Bengal Tenancy Act (VIII of 1885), s. 49, cl. (b) and s. 178.*] The plaintiffs sued to eject the defendant from certain land, alleging that it formed part of their holding, and that the defendant was their sub-tenant. The defendant denied the plaintiff's title, and set up the title of a third person adverse to that of the plaintiffs. The lower Appellate Court found that the defendant was the plaintiff's tenant, and both the lower Courts held that the defendant by denying the title of his landlord had forfeited his rights as a tenant, and was therefore liable to be treated as a trespasser, and as such to be evicted without notice:—*Held*, that in all cases to which the Bengal Tenancy Act applies there can be no eviction on the ground of forfeiture incurred by denying the title of the landlord, and that, it having been found by the lower Appellate Court that the defendant was an under-ryot of the plaintiffs, he could not be evicted from his holding except after notice to quit, as prescribed in s. 49, cl. (*b*) of the Bengal Tenancy Act. *Debiruddi* v. *Abdur Rahim*, I. L. R. 17 Calc. 196, followed. DHORA KAIRI *v.* RAM JEWAN KAIRI.

[I. L. R. 20 Calc. 101

LANDLORD AND TENANT—*continued.*

(7) FORFEITURE—*concluded.*

(*c*) DENIAL OF TITLE—*concluded.*

25.—*Forfeiture by alienation—Denial of landlord's title in pleadings—Written statement—Cause of action.*] Lands in Malabar were demised on *anubhavam* tenure. Some of them were alienated by the tenant, but the landlord subsequently accepted rent. More than twelve years after the alienation, the landlord sued to eject the tenant on the ground that the tenure was thereby forfeited. The tenant for the first time in his written statement denied the landlord's title:—*Held*, that the plaintiff could not recover in this suit on the ground of the denial of his title in the written statement. MADAVAN *v.* ATHI NANGIYAR.

[I. L. R. 15 Mad. 123

(8) ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

26.—*Madras Rent Recovery Act (Madras Act VIII of 1865), s. 12 - Surrender by abandonment.*] In a suit to recover possession of certain land comprised in an unexpired lease granted to the plaintiff by the first defendant it was pleaded that the plaintiff had left the land waste, and had refused to pay rent or give a written relinquishment of the land, and that the first defendant had accordingly let it to the second defendant:—*Held*, that although the defence did not disclose a surrender by the plaintiff, recorded as prescribed in the Rent Recovery Act, s. 12, yet inasmuch as a surrender is not necessarily invalid because it has not been so recorded, and an oral relinquishment followed by abandonment of the land is not inoperative as a surrender under s. 12 of that Act, the Court should determine the issue whether there had been a surrender by the plaintiff. NARASIMMA *v.* LAKSHMANA.

[I. L. R. 13 Mad. 124

27.—*Madras Rent Recovery Act (Madras Act VIII of 1865), s. 12—Mulgeni holding—Right of tenant to relinquish his lease.*] It is not competent to a *mulgeni* tenant in South Canara to relinquish his lease and free himself from his obligation for rent without the consent of the landlord. KRISHNA *v.* LAKSHMINARANAPPA.

[I. L. R. 15 Mad. 67

28.—*Surrender of lease—Perpetual lease.*] The *karnavan* of a Malabar *kovilagom* executed a *kuikanom* lease of certain land, the *jenm* of the *kovilagom*, in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present *karnavan* sued in 1889 to recover possession of the land:—*Held*, that the perpetual lease as being of an improvident character was *ultra vires* and void; and that the original lease was not surrendered by the acceptance of the subsequent lease. RAMUNNI *v.* KERALA VARMA VALIA RAJA.

[I. L. R. 15 Mad. 166

LANDLORD AND TENANT—*continued.*

(8) ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE—*concluded.*

29.—*N.-W. P. Rent Act (XII of* 1881), *ss.* 9,31 *—Exproprietary tenant—Relinquishment of exproprietary rights.*] Though an ex-proprietary tenant cannot transfer his rights as such for a consideration, there is nothing to prevent his voluntarily relinquishing those rights. GAYA SINGH *v.* UDIT SINGH.

[I. L. R. 13 All. 396

(9) EJECTMENT.

(*a*) NOTICE TO QUIT.

30.—*Kasavargam tenant—Transfer by tenant without consent of landlord.*] The *mirasidars* of a village in the Tanjore District sued to recover a *manai* which had been put into the possession of the ancestors of defendant No. 8, who were village blacksmiths, as *kasavargam* tenants. Defendant No. 8 had left the village and sold the land as if it were his ancestral property to others of the defendants, who were now in occupation:—*Held*, that the plaintiffs were entitled to recover the land without proof of notice to quit to the occupants. SUBBARAYA *v.* NATARAJA.

[I. L. R. 14 Mad. 98

31.—*Notice under s.* 84 *of Bombay Act (V of* 1879)*—Plea of permanent tenancy, raised for the first time in defendants' written statement in ejectment suit—Denial of landlord's title—Objection of want of proper notice raised first in second appeal.*] The plaintiff sued to eject the defendants as tenants holding over after notice to quit. The notice required the defendants to vacate within eight days. The defendants pleaded that they were *mirasi* or permanent tenants. This plea was not proved. The Court of First Instance passed a decree awarding immediate possession. The Appellate Court held that although the notice to quit was not according to s. 84 of the Bombay Land Revenue Code (Bombay Act V of 1879), still as the suit was brought long after the expiry of the proper period, the plaintiff was entitled to recover possession "at the end of the present cultivating season": *Held*, in second appeal, that the notice to quit not being according to law, there was no legal determination of the tenancy. The plaintiff could not, therefore, succeed. *Held*, also, that the plea of permanent tenancy set up for the first time in the defendants' written statement in the present case was not such a disclaimer of the landlord's title as to dispense with proof of a legal notice to quit on the part of the plaintiff: *Baba* v. *Vishvanath Joshi*, I. L. R. 8 Bom 228, dissented from. *Held*, further, that it was open to the defendants for the first time in second appeal to raise the objection of want of proper notice. VITHU *v.* DHONDI.

[I. L. R. 15 Bom. 407

See also HAJI SAYYAD *v.* VENKTA.

[I. L. R. 15 Bom. 414 note

and RAM CHANDRA APPAJI ANGAL *v.* DAULATJI.

[I. L. R. 15 Bom. 415 note

LANDLORD AND TENANT—*continued.*

(9) EJECTMENT—*concluded.*

(*a*) NOTICE TO QUIT—*concluded.*

32.—*License to occupy.*] The plaintiffs, who were *mirasidars* of a village, permitted the defendants to occupy their land on the condition, that they should do blacksmith's work for the plaintiffs. The defendants ceased to do the work after a time:—*Held*, that the plaintiffs were entitled to evict the defendants without notice to quit. ATHAKUTTI *v.* GOVINDA.

[I. L. R. 16 Mad. 97

33.—*Plea of permanent tenancy.*] In a suit for possession of land, the plaintiffs claimed title under a lease from the *shrotriemdars* of the village where the land was situated. The defendants, who had obstructed the plaintiffs from taking possession of part of the land, claimed to have permanent occupancy-rights; and asserted that the *shrotriemdars* were entitled not to the land itself but to *melvaram* only. To meet this allegation the plaintiffs tendered in evidence documents executed by other tenants in the same village showing that they were *purakudis* merely. The defendant's had received no notice to quit before suit:—*Held*, that the plaintiffs were entitled to eject the defendants without proof of notice to quit, as it did not appear that the latter were in possession as tenants at the time when the suit was filed. VYTHILINGA *v.* VENKATACHALA.

[I. L. R. 16 Mad. 194

34.—*Suit by tenant to recover possession claiming as full owner—Subsequent claim as yearly tenant unjustly dispossessed—Denial of landlord's title—Variance in statement between pleading and proof.*] A plaintiff sued to recover possession of certain fields, &c., alleging that he was a permanent tenant of the defendant, having purchased the right of occupancy from previous occupants of the land. The lower Court held that the plaintiff's vendors were mere yearly tenants and not permanent tenants, but that the sale of their right to the plaintiff was valid, and that the plaintiff had been wrongfully dispossessed by the defendant, no notice to quit having been given. But *held*, that the plaintiff could not recover; for his plaint and the conduct of his case amounted to a denial of his landlord's (defendant's) title. In his suit the plaintiff claimed to be full owner, and he could not afterwards claim to be restored to possession on the ground that he was a yearly tenant entitled to notice to quit, which was not given. LALU GAGAL *v.* BAI MOTAN BIBI.

[I. L. R. 17 Bom. 631

(10) COMPENSATION FOR IMPROVEMENTS ON LAND.

35.—*Malabar Compensation for Tenants Improvements Act (Madras Act I of* 1887), *ss.* 1, 2, 4, 6—*Mode of assessing compensation for improvements.*] The sum to be allowed for compensation for a tenant's improvements under Madras Act I of 1887 is not to be determined by capitalizing either the annual rent or the annual increment due to the

LANDLORD AND TENANT—*continued.*

(10) COMPENSATION FOR IMPROVEMENTS ON LAND—*continued.*

improvement, but a reasonable sum should be awarded, assessed with reference to the amount by which the market-value or the letting-value or both has been increased thereby; and the Court should take into consideration the actual condition of the improvement at the time of the eviction, its probable duration, the labour and capital which the tenant has expended in effecting it, and any reduction or remission of rent or other advantage which the landlord has given to the tenant in consideration of the improvement. In the absence of evidence as to the actual market-value in the place where the land is situated, the reasonable mode of estimating the compensation consists in taking the cost of the improvement and interest thereon and in adjusting the compensation to be awarded with reference to the matters specified in s. 6. VALIA TAMBURATTI *v.* PARVATI. PARVATI *v.* VALIA TAMBURATTI.

[I. L. R. 13 Mad. 454

36.—*Malabar Compensation for Tenants Improvements Act (Madras Act I of* 1887), *s. 7—General Clauses Consolidation Act, s.* 6] A suit to recover property in Malabar demised on *kanom* was pending when the Malabar Compensation for Tenants Improvements Act came into force:—*Held*, on the construction of ss 1, 5, 7, that the tenants' right to compensation should be dealt with in accordance with the provisions of that Act MALIKAN *v.* SHANKUNNI.

[I. L. R. 13 Mad. 502

37.—*Tenant expending money on land with landlord's knowledge and consent—Acquiescence—Estoppel—Right of tenant on eviction to be recouped the money so expended—Buildings erected on land held under lease, removal of.*] The defendant entered into occupation of certain land with the permission of the plaintiff, who was the owner, and erected buildings and otherwise expended money upon it. The plaintiff and the defendant were relations and lived near each other. The plaintiff constantly visited the land and knew what the defendant was doing, but made no objection. Subsequently the plaintiff, being anxious to obtain from the defendant an acknowledgment of his (the plaintiff's) title, induced (but without misrepresentation or fraud) the defendant to sign a rent-note. The Court found that although this rent-note was, in terms, a lease for one year, yet the intention of the parties was not that the defendant should at the expiration of the year, or on any subsequent demand, hand over to the plaintiff the land with the buildings which had been erected by the defendant with the plaintiff's implied consent, without being recouped for the expenditure thus incurred; that subsequently to the execution of the rent-note the defendant had erected other buildings, and that the plaintiff knew of this, and made no objection:—*Held*, that the plaintiff could not recover possession of the land, or require the removal of the buildings, without recouping the defendant the money he had expended. The plaintiff was estopped from denying the claim of defendant. He had stood by in silence while his tenant had spent money on his land. DATTATRAYA RAYAJI PAI *v.* SHRIDHAR NARAYAN PAI.

[I. L. R. 17 Bom. 736

LANDLORD AND TENANT—*concluded.*

(10) COMPENSATION FOR IMPROVEMENTS ON LAND—*concluded.*

LAWS LOCAL EXTENT ACT (XV OF 1874), ss. 3, 4.

See CRIMINAL PROCEEDINGS.

[I. L. R. 13 Mad. 353

LEASE.

Col.

1. Construction 569

See BENGAL TENANCY ACT, SCH. III, ART. 2.

[I. L. R. 19 Calc. 489

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 16 Bom. 568

See LIMITATION ACT, 1877, ART. 116.

[I. L. R. 19 Calc. 489

See REGISTRATION ACT, s. 17.

[I. L. R. 17 Calc. 548

[I. L. R. 14 Bom. 319

[I. L. R. 14 Mad. 271

See STAMP ACT, 1879, SCH. II, ART. 13.

[I. L. R. 15 Bom. 73

——, Agreement for—

See STAMP ACT, 1879, SCH. I, ART. 4.

[I. L. R. 17 Calc. 548

——, Assignment of—

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 14 All. 176

——, by Government for term of years.

See HINDU LAW—PARTITION—PROPERTY LIABLE OR NOT TO PARTITION.

[I. L. R. 16 Bom. 528

See PARTITION—JURISDICTION OF CIVIL COURTS IN SUITS FOR PARTITION.

[I. L. R. 16 Bom. 528

——, Suit for rent under—

See BENGAL TENANCY ACT, SCH. III ART. 2.

[I. L. R. 17 Calc. 469

LEASE—*continued.*

——, Construction of—

See CO-SHARERS—SUITS WITH RESPECT TO JOINT PROPERTY—RENT SUIT FOR.

[I. L. R. 20 Calc. 107

(1) CONSTRUCTION.

1.—*Construction of lease, as to the inheritance of it by the heir on the lessee's death.*] An *ijara* for one hundred and twenty-five years granted to a wife stated that it was for the performance of pious acts by her, and that on her death her sons were to take. Her only son died before her, leaving a son:—*Held*, that the construction that the grandson inherited the term on the death of the lessee was correct. *Tej Chund Bahadoor* v. *Srikanth Ghose*, 3 Moore's I. A. 261, referred to. GOBIND LAL ROY *v.* HEMENDRA NARAIN ROY CHOWDHRY.

[I. L. R. 17 Calc. 686

2.—*Condition restraining alienation—Alienation voluntary or by act of law—Condition for benefit of lessor—Re-entry—Forfeiture—Transfer of Property Act (IV of 1882), ss. 10, 11, 12, 111, cl. (g).*] By a clause in a lease it was stipulated that the lessee would not transfer in writing the land leased to him, and that if he did so the sale was to be void. The land was sold to the defendants in execution of a decree obtained against the lessee. In a suit in ejectment by the assigns of the lessors:—*Held*, that the condition was void under s. 10 of the Transfer of Property Act, no right of re-entry being reserved to the lessors by the lease. NIL MADHAB SIKDAR *v.* NARATTAM SIKDAR.

[I. L. R. 17 Calc. 826

3.—*Permanent ijara lease—Right of heirs of demisee.*] A fixed permanent *ijara patta* confers no rights on the heirs of the demisee. RAJARAM *v.* NARASINGA.

[I. L. R. 15 Mad. 199

4.—*Perpetual tenancy.*] Where the terms of a lease did not appear to create a perpetual tenancy, there being no circumstances in the evidence from which the Court ought to infer that the intention of the parties was to create such a tenancy:—*Held*, that the lease was not a perpetual lease. *Gangabai* v. *Kalapa*, I. L. R. 9 Bom. 419; and *Gangadhar Bhikaji* v. *Mahadu*, P. J. for 1889, p. 321, referred to. RAMABAI SAHEB PATWARDHAN *v.* BABAJI.

[I. L. R. 15 Bom. 704

5.—*Osathowla—Re-entry—Forfeiture—Sale in execution of decree—Saleable interest—Alienation by operation of law—Conditions restraining alienation.*] *A* sued to recover possession of certain land which was leased in *osathowla* by his father to *B*. The lease expressly prohibited the lessee and his heir from making any assignment of the property either by sale or gift, but it did not contain any provision for forfeiture or for re-entry by reason of an assignment in violation of its terms, nor was there any provision restricting a sale in execution of a decree. The *osathowla* passed to *B's* executor and was sold in execution of a decree against *B*:—*Held*, that the sale passed a good title. It is clear law in India, as in England, that a general restriction on assignment does not apply to an assignment by operation of law taking effect *in invitum*, as a sale under an execution. *Vyankatraya* v. *Shivrambhat*, I. L. R. 7 Bom. 256; *Diwali* v. *Apaji Ganesh*, I. L. R. 10 Bom. 342; and *Tamaya* v. *Timapa Ganpaya*, I. L. R. 7 Bom. 262, referred to. *Held* also, that even if there had been a provision in the lease for forfeiture or for re-entry by reason of an assignment in violation of its provisions, it would not have the effect of invalidating the sale in execution, which has always been held not to be of itself a breach of a covenant not to assign. GOLAK NATH ROY CHOWDHRY *v.* MATHURA NATH ROY CHOWDHRY.

[I. L. R. 20 Calc. 273

LEAVE TO BID.

See LIMITATION ACT, 1877, ART. 179—STEP IN AID OF EXECUTION.

[I. L. R. 13 All. 211

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R. 19 Calc. 4

LEAVE TO SUE.

See COMPANY—WINDING UP—GENERAL CASES.

[I. L. R. 16 Bom. 644

See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[I. L. R. 15 Bom. 93

[I. L. R. 17 Bom. 466

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

[I. L. R. 21 Calc. 181, 181 note

[I. L. R. 15 Bom. 309

[I. L. R. 20 Calc. 397, 810

See RIGHT OF APPEAL.

[I. L. R. 17 Bom. 466

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—ARMY ACT.

[I. L. R. 18 Calc. 144

LEGACY.

——, Demonstrative legacy.

See WILL—CONSTRUCTION.

[I. L. R. 19 Calc. 444

——, Failure of.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 448

LEGACY—*concluded.*

——, Suit for.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION — LEGACY, SUIT FOR.

[I. L. R. 17 Calc. 387

LEGAL PRACTITIONERS ACT (XVIII of 1879).

——, s. 13.

See PLEADER — REMOVAL, SUSPENSION AND DISMISSAL.

[I. L. R. 13 All. 93

——, s. 27.

See PLEADER—REMUNERATION.

[I. L. R. 12 All. 169

——, s. 28.

See PLEADER—REMUNERATION.

[I. L. R. 14 Mad. 63

[I. L. R. 16 Mad. 278

[I. L. R. 12 All. 169

——, s. 29.

See PLEADER—REMUNERATION.

[I. L. R. 14 Mad. 63

[I. L. R. 12 All. 169

LEGITIMACY.

See MAHOMEDAN LAW — ACKNOWLEDGMENT.

[I. L. R. 15 All. 396

LEPROSY.

See MALABAR LAW—CUSTOM.

[I. L. R. 13 Mad. 209

LETTERS IN POST OFFICE.

See ATTACHMENT — SUBJECTS OF ATTACHMENT — LETTERS IN POST OFFICE.

[I. L. R. 13 Mad. 242

LETTERS OF ADMINISTRATION.

——, Application for.

See LIMITATION ACT, 1877, ART. 178.

[I. L. R. 19 Calc 48

——, Grant of.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 20 Calc. 888

——, Petition for.

See PRACTICE — CIVIL CASES—LETTERS OF ADMINISTRATION.

[I. L. R. 20 Calc. 879

—— with will annexed.

See PROBATE—TO WHOM GRANTED.

[I. L. R. 19 Calc. 582

LETTERS OF ADMINISTRATION—*concld.*

1.—*Administration de bonis non—Will relating to self-acquired property—Suit by testator's son. —Probate and Administration Act* (V of 1881). *ss.* 45, 82.] A Hindu by his will bequeathed certain land, his self-acquired property, to his infant son. On his death, his widow, who was the executrix named in the will, took out probate, but she died intestate before she had fully administered the estate. The son now sued by his next friend to recover arrears of rent which had accrued due on the land, which had been leased to the defendants by the testator:—*Held*, that letters of administration *de bonis non* should have been taken out, and that since the plaintiff did not represent the estate of the testator, he was not competent to maintain the suit. NARASIMMULU *v.* GULAM HUSSAIN SAIT.

[I. L. R. 16 Mad. 71

2.—*Deceased having no property or fixed place of abode within district—Jurisdiction of the District Judge—Succession Act* (*X of* 1865), *s.* 240.] A District Judge cannot grant letters of administration to a Parsi if the deceased had not at the time of his death a fixed place of abode or any property within his district. See s. 240 of the Indian Succession Act (X of 1865). FARDUNJI ASPANDIARJI *v.* NAVAJBAI.

[I. L. R. 17 Bom. 689

3.—*Probate and Administration Act* (*V of* 1881), *ss.* 23, 41—*Power of Court to associate another person with applicant in grant of letters of administration.*] On an application for letters of administration to which the applicant is legally entitled under s. 23 of the Probate and Administration Act, the Court has no power to order, under s. 41 of the Act, that another person who has no present interest in the estate should be associated with the applicant in the grant. Section 41 applies to a case where, for some just cause, the person who is legally entitled to letters of administration ought to be superseded, and the grant made to another person. ANNOPURNA DASI *v.* KALLAYANI DASI.

[I. L. R. 21 Calc. 164

4.—*Grant of administration without determining title to property.*] In an application for letters of administration, *held*, on the evidence, that the deceased left property to which administration could be granted without finally determining the title to such property. MOHUN PERSHAD NARAIN SINGH *v.* KISHEN KISHORE NARAIN SINGH.

[I. L. R. 21 Calc. 344

LETTERS PATENT, HIGH COURT, 1865, cl. 12.

See JURISDICTION — CAUSES OF JURISDICTION—CAUSE OF ACTION.

[I. L. R. 15 Bom. 93

[I. L. R. 17 Bom. 466

LETTERS PATENT, HIGH COURT, 1865, cl. 12—*continued.*

See JURISDICTION—CAUSES OF JURISDICTION — DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN.

[I. L. R. 14 Bom. 541

See JURISDICTION—SUITS FOR LAND.

[I. L. R. 19 Calc. 358, 361 note

[I. L. R. 14 Bom. 353

See RIGHT OF APPEAL.

[I. L. R. 17 Bom. 466

1.—Cl. 15.—*Appeal from decision of a Judge exercising Admiralty or Vice-Admiralty jurisdiction—Practice — Vice-Admiralty Regulations of* 1832, *Rule* 35, *Application of—Mentioning of the apportionment of award for salvage services—Peremption of appeal.*] Under cl. 15 of the Letters Patent, 1865, an appeal lies to the High Court from the decision of one of its Judges exercising Admiralty or Vice-Admiralty jurisdiction. Such appeals are governed by the practice under the Civil Procedure Code, and not by Rule 35 of the Vice-Admiralty Regulations published under the authority of 2 Will. IV, Chap. 51. Rule 35 applies to appeals from the High Court to the Privy Council. The *Brenhilda*, I. L. R. 7 Calc. 547; L. R. 8 I. A. 159, relied on. The mere fact of the salvors having appeared and mentioned in Court the matter of the apportionment of an award for salvage services reserved by the decree making the award, did not perempt an appeal from that decree. IN THE MATTER OF THE SHIP "CHAMPION."

[I. L. R. 17 Calc. 66

2.—Cl 15.—*Appeal from order of Judge in Privy Council Department—"Judgment," meaning of.*] No appeal will lie from an order of a Judge granting a certificate that a case is a fit and proper one for appeal to the Privy Council. LUTF ALI KHAN *v.* ASGUR REZA.

[I. L. R. 17 Calc. 455

3.—Cl. 15.—*Appeal from order of Judge in Privy Council Department refusing to extend time for furnishing security for costs—"Judgment," meaning of.*] No appeal will lie from an order of a Judge in the Privy Council Department refusing to extend the time prescribed by law within which an appellant is required to furnish security for the costs of the respondent, and directing the appeal to be struck off by reason of such security not having been given within the prescribed time. Such an order is not a "judgment" within the meaning of cl. 15 of the Letters Patent of 1865:—*Held*, upon a review of the authorities, that where an order decides finally any question at issue in the case or the rights of any of the parties to the suit, it is a "judgment" under cl. 15 of the Letters Patent and is appealable, but not otherwise. KISHEN PERSHAD PANDAY *v.* TILUCKDHARI LALL.

[I. L. R. 18 Calc. 182

LETTERS PATENT, HIGH COURT, 1865 —*continued.*

4.—Cl. 15.—*Order fixing date of hearing—Civil Procedure Code, s.* 156.] An order made by a Judge of the High Court at settlement of issues fixing a distant date for the hearing of a suit is not an order under s. 156 of the Civil Procedure Code and is appealable under Letter Patent, s. 15. R. *v.* R.

[I. L. R. 14 Mad. 88

5.—Cl. 15.—*Order on hearing under s.* 622, *Civil Procedure Code—Judgment—Suit for rent.*] In a suit in a Small Cause Court for rent due in respect of two pieces of land, the Court passed a decree in favour of the plaintiff. The defendant preferred a petition to the High Court under Civil Procedure Code, s. 622, which came on for hearing before one Judge He *held* that the Small Cause Court had failed to give effect to a former decree between the parties in respect of one piece of land, and made an order reversing the decree as to that, and calling for a report of what was due on the other piece of land The plaintiff preferred an appeal under Letters Patent, s. 15:—*Held* the above-mentioned order was subject to appeal as being a judgment. VANANGAMUDI *v.* RAMASAMI.

[I. L. R. 14 Mad. 406

6.—Cl. 15.—*Order discharging rule to show cause why minor should not be delivered to claimant—Judgment—Custody of minor—Criminal Procedure Code,* 1832, *s.* 491.] The petitioner as stepmother claimed to be entitled to the custody of her deceased husband's minor son, who was living with *D*, his maternal uncle She obtained a rule calling upon *D* to show cause why the child should not be delivered to her. After argument the rule was discharged:—*Held*, that the order discharging the rule was a judgment within the meaning of cl. 15 of the Letters Patent, 1865, and that, therefore, under that clause the petitioner had a right to appeal against the order. IN THE MATTER OF NARRONDAS DHANJI. IN THE MATTER OF THE PETITION OF JAVERVAHU.

[I. L. R. 14 Bom. 555

7.—Cl. 15—*Order refusing to stay execution of decree for costs—Civil Procedure Code (Act XIV of* 1882), *s.* 608—*Security for costs—Costs.*] An order refusing to stay execution in the exercise of the discretion given to the Court under s. 608 of the Civil Procedure Code is not a decision which affects the merits of any question between the parties by determining a right or liability, and no appeal from such an order will lie under cl. 15 of the Letters Patent. MOHABIR PROSAD SINGH *v.* ADHIKARI KUNWAR.

[I. L. R. 21 Calc. 473

———, Cl. 17.

See GUARDIAN—APPOINTMENT.

[I. L. R. 21 Calc. 206

———, Cl. 26.

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 17 Calc. 642

LETTERS PATENT, HIGH COURT, 1865 —*concluded.*

——, Cl. 28.

See HIGH COURT, JURISDICTION OF—HIGH COURT, MADRAS—CRIMINAL.

[I. L. R. 14 Mad. 121

——, Cl. 36.—*Criminal Procedure Code*, 1882, *s.* 429—*Difference of opinion between Judges of Division Bench of High Court—Practice—Procedure.*] Where the Judges of the High Court differed in opinion in a case referred by a Sessions Judge to the High Court under s. 307 of the Criminal Procedure Code (Act X of 1882), the Court (JARDINE and CANDY, JJ.) directed that the case should be laid before a third Judge of the High Court, being of opinion that the Criminal Procedure Code overrules the provisions of cl. 36 of the Letters Patent, 1865. QUEEN-EMPRESS *v.* DADA ANA.

[I. L. R. 15 Bom. 452

LETTERS PATENT, HIGH COURT, N.-W. P.

1.—Cl. 10.—*Order of a single Judge of the High Court amending an appellate decree—Appeal from such order—Civil Procedure Code, ss.* 206, 582, 632.] Whether an order made by a single Judge of the High Court, directing the amendment of a decree passed in appeal by a Division Bench of which he had been a member, is an order made under s. 206 read with ss. 582 and 632 of the Code of Civil Procedure, or, by virtue of the inherent power which the High Court had in the exercise of its Appellate Civil jurisdiction to amend its own decrees, it is one to which the provisions of Chap. XLIII of the Code of Civil Procedure are applicable, and from such order no appeal under s. 10 of the Letters Patent will lie. *Hurrish Chunder Chowdhry* v. *Kali Sunderi Debia*, I. L. R. 9 Calc 482; L. R 10 I. A. 4. discussed. MUHAMMAD NAIM-ULLAH KHAN *v.* IHSAN-ULLAH KHAN.

[I. L. R. 14 All. 226

2.—Cl 10.—*Civil Procedure Code, ss.* 556, 558, *and* 588, *cl.* 27—*Dismissal of appeal for default.*] No appeal under s. 10 of the Letters Patent will lie from an order under s. 556 of the Code of Civil Procedure dismissing an appeal for default, the appellant not having had recourse to the procedure provided by s. 558 of the said Code. POHKAR SINGH *v.* GOPAL SINGH.

[I. L. R. 14 All. 361

3.—Cl. 10.—*Civil Procedure Code, ss.* 2, 556, 558, 587, 588, 632—*Appeal—Dismissal of appeal for default—"Order"—"Decree."*] No appeal will lie under s. 10 of the Letters Patent from the order of a single Judge of the High Court dismissing an appeal for default. The decision of a Court dismissing a suit or an appeal for default is an "order" and not a "decree." *Nand Ram* v. *Muhammad Bakhsh*, I. L. R. 2 All. 616; *Mukhi* v. *Fakir*, I. L. R. 3 All. 382; *Dhan Singh* v. *Basant Singh*, I. L. R. 8 All. 519; *Chand Kour* v. *Partab Singh*, I. L. R. 16 Calc. 98; *Muhammad Naim-ullah Khan* v. *Ihsan-ullah Khan*, I. L. R. 14 All. 226, cited. *Ram Chandra Pandurang Naik* v. *Madhav Purushottam Naik*, I. L. R. 16 Bom. 23, not followed. MANSAB ALI *v.* NIHAL CHAND.

[I. L. R. 15 All. 359

LETTERS PATENT, HIGH COURT, N.-W. P., cl. 10—*concluded.*

4.—Cl. 10.—*Order of Judge on revision—Provisional Small Cause Court Act (IX of* 1887) *s.* 25.] No appeal will lie under s. 10 of the Letters Patent from an order of a single Judge of the High Court in revision under s. 25 of Act No. IX of 1887. *Muhammad Naim-ullah Khan* v. *Ishan-ullah Khan*, I. L. R. 14 All. 226, referred to. GAURI DATT *v.* PARSOTAM DAS.

[I. L. R. 15 All. 373

LIBEL.

1.—*Libel in judicial proceedings — Privilege of parties and witnesses in suit—Right of suit—Liability to damages by civil action for such defamation.*] No action for slander lies for any statement in the pleadings or during the conduct of a suit against a party or witness in it. The plaintiff claimed to recover damages from the defendants for publishing defamatory matter in an application they had filed in a suit brought against them by one *M*, in which the plaintiff was described by the defendants as a person "whose occupation it was to obtain his living by getting up such fraudulent actions," and that he was induced to make a false claim by the plaintiff. The application appeared to have been made with the object of having other persons made parties to that suit:—*Held*, that the defendants were privileged against a civil action for damages for what they may have said of the plaintiff in the application they had presented in that suit. *Seaman* v. *Netherclift*, L. R. 1 C. P. D. 545, and *Gunnesh Dutt Singh* v. *Mugneeram Chowdhry*, 11 B. L. R. 321, followed. NATHJI MULESHVAR *v.* LALBHAI RAVIDAT. LALBHAI RAVIDAT *v.* NATHJI MULESHVAR.

[I. L. R. 14 Bom. 97

2.—*Defamatory statement made by one newspaper copied into another and commented upon as untrue—Repetition of libel—Malice.*] A certain newspaper called the *Rajya Bhakta* published a false and defamatory statement of the plaintiff. More than a month afterwards the defendants published an article in their newspaper, the *Jam-e-Jamshed*, calling attention to the statement made in the *Rajya Bhakta* and repeating it. The article, however, declared that the said statement was "evidently false." It pointed out that the defendants were the first to raise an outcry against it; that they had expected the plaintiff to take notice of it, but that as he had not done so they published that intimation to the public. The plaintiff sued the defendants for libel. He alleged that he had not taken any notice of the original statement in the *Rajya Bhakhta*, as that paper was an obscure print not generally read in the Parsi community to which both he and the defendants belonged. He complained that the defendants had maliciously repeated and called

LIBEL—*concluded.*

attention to the libel in their paper for the purpose of giving it a wide circulation, and that their assertion of its untruth was made merely in order to protect themselves. The defendants pleaded that the article in their paper was not defamatory, and denied malice:—*Held*, that, reading the article as a whole and in its natural sense, and taking it in connection with previous articles appearing in the defendants' paper with reference to the plaintiff, it was in itself defamatory of the plaintiff. KAIKHUSRU NAOROJI KABRAJI *v.* JEHANGIR BYRAMJI MURZBAN.

[I. L. R. 14 Bom 532

LICENSE.

——— for building.

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 180.

[I. L. R. 16 Mad. 230

———, Necessity for.

See POLICE ACT (XLVIII OF 1860), s. 11.

[I. L. R. 15 Bom. 530

———, Obligation to grant.

See BENGAL MUNICIPAL ACT, 1884, s. 339.

[I. L. R. 17 Calc. 329

See HIGH COURT, JURISDICTION OF—HIGH COURT, CALCUTTA—CIVIL.

[I. L. R. 17 Calc. 329

———, Power to grant or refuse.

See BENGAL MUNICIPAL ACT, 1884, s. 337.

[I. L. R. 20 Calc. 654

——— to transport opium.

See OPIUM ACT, s. 3.

[I. L. R. 13 Mad. 191

Easements Act (*V of* 1882), *ss.* 52, 56—*Document giving permission to capture elephants—Easement.*] The owner of a forest, in 1883, executed an instrument whereby he gave to the other party thereto permission to trap fifty elephants in the forest, and stipulated for a certain payment in respect of each elephant which was captured. In 1884, without the knowledge of the owner of the forest, the other party, by a similar instrument, gave permission to the defendant to trap ten elephants. The instrument of 1883 was expressed to be in force for six years, that of 1884 for four years. The latter instrument was not ratified by the owner of the forest, who, in 1885, granted the exclusive right of trapping elephants to the plaintiff. The plaintiff now sued the defendant for possession of two elephants which had been captured by him:—*Held*, that the instrument of 1883 was a license merely, and that, since the owner of the forest had never consented to or ratified the instrument of 1884, the plaintiff was entitled to a decree. RAMAKRISHNA *v.* UNNI CHECK.

[I. L. R. 16 Mad. 280

LIEN.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[I. L. R. 14 All. 273

——— for unpaid purchase-money.

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[I. L. R. 13 Mad. 158

——— of Attorney for costs.

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

[I. L. R. 19 Calc. 368

[I. L. R. 21 Calc. 85

Banian of firm, lien of—Consignment and sale of goods—Right of consignor as against banian to goods consigned to Calcutta firm—Consignor and consignee—Banian's claim to lien on account with the firm—Custom of trade—Contract Act (*IX of* 1872), *s.* 178—*Principal and agent.*] There is no rule of law giving a lien to the banian of a Calcutta firm as against his employer, nor is there any custom to that effect. If the banian claims a lien he must prove its existence either by showing some express agreement giving him the lien or by showing some course of dealing from which it is to be implied. On the other hand, where merchandise consigned has been sold in good faith, and in accordance with the purpose for which the consignment was made, and the proceeds have been brought into account between the consignee and the banian, the latter is not liable to account to the consignor. The principal of the agent cannot disturb the account with the sub-agent except on the ground of bad faith. A banian not setting up a written agreement nor asserting that he had advanced to the firm on the security of specific quantities, claimed a lien as against the consignor on merchandize consigned to the firm whether arrived or in transit. The lien alleged was for the general balance of account, in virtue of an agreement extending to the whole of the merchandize consigned whatever might have been the terms of the consignment between the consignor and consignee. The banian had made advances, but for them the consideration was the profit to be made by sales. There was no pledge, nor any agreement express or implied, giving the banian a lien on the goods consigned. It was therefore unnecessary to determine whether the banian had notice of the terms of the consignments, nor was it necessary to consider the effect of s. 178 of the Contract Act (IX of 1872), there having been no pawn. The banian having no lien against the consignee had none against the consignor, and could not question the right of the latter to stop *in transitu*. PEACOCK *v.* BAIJNATH. GRAHAM *v.* BAIJNATH.

[I. L. R. 18 Calc. 573

[L. R. 18 I. A. 78

LIMITATION.

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1.	Question of Limitation	581
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See ACT XIII OF 1859, S. 2.
[I. L. R. 16 Mad. 347

See BENGAL RENT ACT, 1869, S. 31.
[I. L. R. 20 Calc. 498

See BENGAL TENANCY ACT, S. 174.
[I. L. R. 18 Calc. 231

See CASES UNDER BENGAL TENANCY ACT, SCH. III.

See BOMBAY LAND REVENUE ACT, S. 135.
[I. L. R. 15 Bom. 424

See BOMBAY REVENUE JURISDICTION ACT, S. 4.
[I. L. R. 16 Bom. 455

See CALCUTTA MUNICIPAL ACT, 1876, S. 357.
[I. L. R. 18 Calc. 91

See CIVIL PROCEDURE CODE, S. 230.
[I. L. R. 15 All. 198

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.
[I. L. R. 17 Bom. 469, 472

See COPYRIGHT.
[I. L. R. 17 Calc. 951

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[I. L. R. 18 Calc. 462, 515
[I. L. R. 15 Bom. 370

See HEREDITARY OFFICES ACT, S. 10.
[I. L. R. 17 Bom. 362

See INSOLVENT ACT, SS. 72, 73.
[I. L. R. 14 Mad. 404

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.
[I. L. R. 12 All 419
[I. L. R. 14 All. 223

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 261.
[I. L. R. 16 Mad. 474

See MADRAS LOCAL BOARDS ACT, S. 27.
[I. L. R. 16 Mad. 296

See MADRAS LOCAL BOARDS ACT, S. 128.
[I. L. R. 13 Mad. 442

LIMITATION—*continued.*

See MADRAS RENT RECOVERY ACT, S. 2.
[I. L. R. 13 Mad. 463

See MADRAS RENT RECOVERY ACT, S. 51.
[I. L. R. 13 Mad. 361

See MADRAS REVENUE RECOVERY ACT, S. 59.
[I. L. R. 15 Mad. 219

See MALABAR LAW—ENDOWMENT.
[I. L. R. 14 Mad. 153

See MALABAR LAW—JOINT FAMILY.
[I. L. R. 14 Mad. 38

See MALABAR LAW—MORTGAGE.
[I. L. R. 14 Mad. 312

See MORTGAGE—CONSTRUCTION OF MORTGAGES.
[I. L. R. 16 Bom. 303

See CASES UNDER ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.

See PLAINT—VERIFICATION AND SIGNATURE.
[I. L. R. 17 Calc. 580

See POSSESSION—ADVERSE POSSESSION.
[I. L. R. 14 Bom. 176
[I. L. R. 18 Calc. 341

See RIGHT OF SUIT—ENDOWMENTS, SUITS RELATING TO.
[I. L. R. 13 Mad. 277, 402

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REHEARING OF SUIT.
[I. L. R. 18 Calc. 445

See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.
[I. L. R. 19 Calc. 776

See TRUST.
[I. L. R. 17 Calc. 620

——, Question of.

See BOMBAY CIVIL COURTS ACT, S. 27.
[I. L. R. 14 Bom. 594

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, &C.
[I. L. R. 15 Bom. 28

See REVISION—CIVIL CASES—SMALL CAUSE COURT CASES.
[I. L. R. 15 All. 139

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.
[I. L. R. 13 All. 580
[I. L. R. 15 All. 123

LIMITATION—*continued.*

(1) QUESTION OF LIMITATION.

1.—*Question not taken in pleadings or grounds of appeal—Consideration of question on appeal.*] A question of limitation, when it arises upon the facts before a Court, must be heard and determined, whether or not it is directly raised in the pleadings or in the grounds of appeal. The fact that a subordinate Court has decided that the suit or appeal before it was brought within time, or that there was sufficient cause, within the meaning of s. 5 of the Limitation Act, for the appellant in that Court not presenting the appeal within the period of limitation prescribed, does not preclude the High Court from considering that decision in appeal. BECHI *v.* AHSANULLAH KHAN.

[I. L. R. 12 All. 461

(2) ACT IX OF 1859.

2.—s. 20.—*Forfeiture of rebel's property.*] A Hindu widow in possession of a six-annas zemindari share of her husband's sold the share in 1855 to persons who, in 1858, were convicted of rebellion, and their estates, including the share, were confiscated by Government. The share was granted to other persons as a reward for loyalty, and remained in their possession until 1886, when a suit for possession and mesne profits was brought, just before the expiry of twelve years from the widow's death, by a reversioner to her husband's estate, on the ground that the sale of 1855 could not affect more than the widow's life-interest, and that nothing more had been confiscated by the Government in 1858 and granted to the defendants. The plaintiff had taken no steps in 1855 to question the sale, or in 1858 to assert his claims as reversioner: —*Held*, that the suit was barred by s. 20 of Act IX of 1859. *Ram Dhun* v. *Bhawanee Singh*, 3 Agra. 139; *Bhugwan Das* v. *Banee Dalal*, 2 S D.A.N.-W.P. 1864. 220; and *Mahomed Bahadur Khan* v. *Collector of Bareilly*, 13 B.L. R. 392: L. R. 1 I. A. 167, referred to. RAMPHUL TIWARI *v.* BADRI NATH.

[I. L. R. 13 All. 108

(3) ACT X OF 1859.

3.—s. 33.—*Discovery of fraud—Agency—Suit for an account and for money misappropriated by agent.*] Where the plaintiff alleged that the fraud committed by the agent came to his knowledge on a certain date, and the suit was brought within one year from such date and within three years from the termination of the agency, *held*, that the case came within the proviso of s. 33 of Act X of 1859, and the suit was not barred by limitation:—*Held*, further, that in suits for money misappropriated by an agent where fraudulent accounts have been rendered the plaintiff has an extended period of limitation of one year, which, in the words of s. 33 of Act X of 1859, runs from the time when the fraud is first known to him; but in any particular case the Court, having regard to the nature of the fraud, the facility with which it may be known, and the likelihood of attention being called to it, may infer such knowledge when the means of knowledge first come, or have for a seasonable time been, within the plaintiff's reach,

LIMITATION—*concluded.*

(3) ACT X OF 1859—*concluded.*

or, in other words, may hold the plaintiff fixed with constructive knowledge of the fraud. The Court must therefore, in every such case, ascertain when the plaintiff first had knowledge, actual or constructive, of the fraud. *Mackintosh* v. *Woomesh Chunder Bose*, 3 W. R. Act X, 121; *Dhunput Singh* v. *Rohoman Mundul*, 11 W.R. 163, and 9 W R.329; and *Hurse Mohun Gohoo* v. *Anund Chunder Mookerjee*, 5 W. R. Act X, 1863, referred to. NILMONI SINGH DEO *v.* NILU NAIK.

[I. L. R. 20 Calc. 425

LIMITATION ACT (XIV OF 1859), s. 1, cl. 7

See LIMITATION ACT, 1877, ART. 47.

[I. L. R. 15 Bom. 299

———, s. 5.

See LIMITATION ACT, 1877, ART. 134.

[I. L. R. 15 Bom. 583

LIMITATION ACT (IX OF 1871), s. 29.

See LIMITATION ACT, 1877, ART. 47.

[I.L. R. 15 Bom. 299

———, s. 129.—*Suit questioning an adoption—Invalidity, by Hindu law, of second adoption.*] An adopted son, proprietor in possession of half of the estate of his adoptive father, deceased, sued to obtain the other half which was in the defendant's possession. The defence was that the latter was entitled to the half share in dispute, having been adopted to the deceased under a power given by him to his widow, and exercised by her:—*Held*, that the suit having, in order to succeed, brought into question the second adoption, was a suit to set aside an adoption within the meaning of Art. 129, Sch. II, Act IX of 1871, the Limitation Act in force for a period after the cause of suit had arisen. *Jagadamba Chowdhrani* v. *Dakhina Mohan*, I. L. R. 13 Calc. 308; L. R. 13 I. A. 84, referred to and followed. With reference to the coming into operation of the subsequent Limitation Act (XV of 1877), s. 2 of the latter Act prevented the revival of any right to sue already barred by the previous Act, as the right now claimed had been. *Appasami Odayar* v. *Subramanya Odayar*, I. L. R. 12 Mad. 26; L. R. 15 I. A. 167, referred to. It was nevertheless clear that if this suit had not been barred, the second adoption could not have been held valid under Hindu law as an adoption; because, by that law, a second adoption cannot be made during the life of a son previously adopted. *Rungama* v. *Atchama*, 4 Moo. I. A. 1, referred to. MOHESH NARAIN MUNSHI *v.* TARUCK NATH MOITRA.

[I. L. R. 20 Calc. 487

[L. R. 20 I. A. 30

———, s. 148.

See LIMITATION ACT, 1877, ART. 148.

[I. L. R. 17 Bom. 173

LIMITATION ACT (XV OF 1877).

———, s. 3.—*Defendant—Person through whom a defendant derives his liability to be sued—Purchaser at auction-sale—Suit by a true owner to recover possession—Adverse possession.*] The purchaser at an auction-sale acquires the right, title and interest of the judgment-debtor, and in virtue of that is put in possession, by reason of which he becomes liable to be sued by the true owner. He, therefore, derives such liability within the contemplation of s. 3 of the Limitation Act (XV of 1877) from or through the judgment-debtor. *R*, the owner of sixty-two *thikans*, had mortgaged fourteen of them to *M*. On the 7th December 1877, that is, subsequent to the mortgage to *M*, *R* sold the sixty-two *thikans* to the plaintiff, but did not give up possession. On the 18th June 1872, the six-two *thikans* were sold in execution of a decree against *R*, and were purchased at the auction-sale by *A*, who redeemed the fourteen *thikans* from the mortgagee. On the 7th December 1883, the present suit was filed by the plaintiff to recover possession against the heirs of *R* and *M*. On the 17th January 1884, *A* was joined as a co-defendant to the suit:—*Held*, that the plaintiff's claim against *A* was time-barred with respect to the forty-eight *thikans* which were not mortgaged, *A* being entitled to add to the period of his possession that of *R*, who remained in possession after the sale to the plaintiff. ALI SAHEB *v.* KAJI AHMAD.

[I. L. R. 16 Bom. 197

———, s. 4.

See s. 7.

[I. L. R. 20 Calc. 714

1.—s. 4.—*Memorandum of appeal insufficiently stamped—Deficiency in stamp on memorandum of appeal made good after period of limitation—Court-Fees Act (VII of 1870), s. 28.*] A memorandum of appeal, insufficiently stamped, was presented in the Court of the District Judge on the 24th May, the last day allowed for it by limitation, and was received, and a memorandum endorsed on it "Appeal within time; stamp duty insufficient Rs. 204 odd." On the 27th May an order was passed by the District Judge, and endorsed on the memorandum, allowing the appellant one week within which to supply the deficiency, and this period was on the 5th June further extended by another fortnight being allowed. On the 13th June the full stamp duty was paid by the applicant:—*Held*, that the facts of the case did not bring it within either the spirit or the letter of s. 28 of the Court-Fees Act, and that these proceedings were not such as were contemplated by that section, nor such as to put the appeal in order when the stamp duty was received on the 13th June, and that the appeal had been properly dismissed as being out of time. *Balkaran Rai* v. *Gobind Nath Tiwari*, I. L. R. 12 All. 129, referred to. YAKUTUN-NISSA BIBEE *v.* KISHOREE MOHUN ROY.

[I. L. R. 19 Calc. 747

2.—s. 4.—*Unstamped memorandum of appeal—Stamp affixed after expiry of time of limitation.*] Where a petition of appeal was presented unstamped within the period of limitation, and the stamp was ultimately affixed after the appeal, would have been barred by limitation:—*Held*, following *Skinner* v. *Orde*, L. R. 6 I. A. 126, that the appeal was in time. PATCHA SAHEB *v.* SUB-COLLECTOR OF NORTH ARCOT.

[I. L. R. 15 Mad 78

3.—s. 4.—*Memorandum of appeal insufficiently stamped—Conditional order admitting appeal—Deficiency made good after period of limitation—Court-Fees Act, ss. 4, 5, 25, 28, 30—Memorandum of appeal from decree granting two distinct declarations—Civil Procedure Code, 1882, s. 541.*] An appeal under the Code of Civil Procedure is not presented within the meaning of s. 4 of the Limitation Act (XV of 1877) unless it is accompanied by the copies required by the Code. A memorandum of appeal is a document included in the first and second schedules to the Court-Fees Act (VII of 1870), and is a document within the meaning of ss. 4, 25, 28 and 30 of that Act, and therefore cannot be filed or recorded in or received by the High Court unless and until the proper Court-fee in respect of it is paid, and is of no validity unless and until it is properly stamped. Consequently, if it is not, when tendered, properly stamped, it is not at that time a memorandum of appeal within the meaning of s. 541 of the Code, and the appeal cannot be regarded as having been at that time presented within the meaning of s. 4 of the Limitation Act, or as valid for any other purpose, except in the events specified in s. 28 of the Court-Fees Act. When a memorandum of appeal which, when tendered, was insufficiently stamped has subsequently been sufficiently stamped, the affixing of the full stamps cannot have a retrospective effect so as to validate the original presentation, unless it has been done by order made under the second paragraph of s. 28 of the Court-Fees Act. In the case of a High Court such an order can be made only by a Judge, and by him only in cases "of mistake or inadvertence." These words mean mistake or inadvertence on the part of the Court or its officers, and not on the part of the appellant or his advisers. The expression "head of the office" in s. 28 does not refer to the head of the office of a Court, or at all events to the head of the office of a High Court, acting not as such but as a taxing officer; but it refers to the head of a public office such as the Board of Revenue. The officer mentioned in s. 5 of the Court-Fees Act is not bound to advise parties as to the stamp required under the Act, or to give them notice that they have not sufficiently stamped documents which the Act requires to be stamped before presentation. A plaint contained a prayer for a declaration (i) that certain property was the joint property of the plaintiff, and (ii) that it was not liable to attachment and sale in execution of a decree held by one of the defendants against another; and, as a foundation for the latter relief, alleged collusion, fictitious transactions, and want of title. The decree in the suit, passed on the 14th September 1887, granted both the declarations prayed for.

LIMITATION ACT (XV OF 1877), s. 4—*continued.*

The defendants appealed to the High Court against the whole decree, and stamped their memorandum of appeal with a stamp of Rs. 10 only. On the 9th November 1887 it was tendered to a Judge for admission, and it then bore a report dated the 7th November by the officer appointed under s 5 of the Court-Fees Act, "report will be made on receipt of record." The Judge made an order, "admit, subject to stamp report," and the memorandum was then received by the office, and the appeal was entered on the register. On the 27th September 1888 the office reported that there was a deficiency in the stamp of Rs. 615; on the 9th November the taxing officer ordered that the deficiency should be made good; and on the 8th December 1888 it was made good. At the hearing of the appeal a preliminary objection was taken that the appeal had never been validly presented within time, or admitted, and that it could not be heard:—*Held*, that there was before the Court no valid appeal as to the merits of which the Court could give a decision. BALKARAN RAI *v.* GOBIND NATH TIWARI.

[I. L. R. 12 All. 129

4.—s. 4—*Application for leave to appeal in formâ pauperis—Subsequent appeal in regular form—Payment of Court-fee—Time of presentation of appeal—Retrospective effect.*] Where an application for leave to appeal *in formâ pauperis* having been presented and rejected, a regular appeal was subsequently filed, but after the period of limitation had expired:—*Held*, that the payment of the Court-fee on the regular appeal could not be held to relate back to the memorandum of appeal which accompanied the application for leave to appeal as a pauper, so as to convert that memorandum of appeal into an appeal within time. Until the regular appeal was filed there was nothing before the Court which it could treat, even provisionally, as a memorandum of appeal. BISHNATH PRASAD *v.* JAGARNATH PRASAD.

[I. L. R. 13 All. 305

5.—s. 4.—*Plaint insufficiently stamped—Date of institution of suit—Court-fees, payment of requisite, on a date subsequent to that on which plaint was presented, effect of, on period of limitation.*] The date of the institution of a suit should be reckoned from the date of the presentation of the plaint, and not from that on which the requisite Court-fees are subsequently put in, so as to make it admissible as a plaint. *Skinner* v. *Orde*, I. L. R. 2 All. 241; L. R. 6 I A 126; and *Chennappa* v. *Raghunatha*, I. L. R. 15 Mad. 29, referred to. *Balkaran Rai* v. *Gobind Nath Tiwari*, I. L. R. 12 All. 129, not followed. MOTI SAHU *v.* CHHATRI DASS.

[I. L. R. 19 Calc. 780

6.—s. 4.—*Civil Procedure Code, s. 54—Court-Fees Act (VII of 1870), s. 28—Plaint insufficiently stamped—Power of Court to grant time for making good the deficiency.*] When a Court fixes a time under cl. (*a*) or cl. (*b*) of s. 54 of the Code of

LIMITATION ACT (XV OF 1877), s. 4—*concluded.*

Civil Procedure, it must be a time within limitation. Section 54 does not give a Court any power to extend the ordinarily prescribed period of limitation for suits. Where therefore a plaint was presented on the last day to save its being barred by limitation insufficiently stamped, and at an hour when the office being closed it was impossible to obtain the necessary stamps, and the Munsif made an order to present it on the next open Court day:—*Held*, that under s. 4 of the Limitation Act the plaint had not been presented in time and the suit was barred. *Moti Sahu* v. *Chhatri Das*, I. L. R. 19 Calc. 780, and *Yahut-unnissa Bibi* v. *Kishoree Mohun Roy*, I. L. R. 19 Calc. 747, discussed. JAINTI PRASAD *v.* BACHU SINGH.

[I. L. R. 15 All. 65

7.—s. 4.—*Plaint insufficiently stamped, when deemed to have been presented—Suit, institution of—Civil Procedure Code (Act XIV of 1882), s. 54 (b).*] A plaint having been filed upon the last day allowed by the law of limitation written upon paper insufficiently stamped, the plaintiff was ordered to supply the requisite stamp paper within seven days. This order was complied with within the time appointed, and the plaint was duly registered:—*Held*, that the suit should be taken as instituted on the day when the plaint was first presented to the proper officer, and that the suit was not barred. *Balkaran Rai* v. *Gobind Nath Tiwari*, I. L. R. 12 All. 129, distinguished and doubted. HURI MOHUN CHUCKERBUTTI *v.* NAIMUDDIN MAHOMED.

[I. L. R. 20 Calc. 41

8.—s. 4, and art. 178.—*Summons to tax bill of costs—Summons to attend in Chambers at hearing of application.*] The taking out of a summons calling upon another to attend a Judge in Chambers on the hearing of an application is the act of the applicant and not of the Court taking cognizance of the application, and is not sufficient to save the application from being barred, if the hearing of the application comes on after the time, allowed by the Limitation Act for the application, has expired. The present application therefore was held to have been made within the meaning of the Limitation Act, not when the summons was signed by the Registrar but when the matter came before the Judge, which was more than three years from the time when the right to apply accrued. KHETTER MOHUN SING *v.* KASSY NATH SETT.

[I. L. R. 20 Calc. 899

———, s. 5.

See s. 12.

[I. L. R. 12 All. 79, 105, 461

1.—s. 5.—*Time expiring when Court is closed—Execution of decree—Transfer of decree for execution.*] Where parties are prevented from doing a thing in Court on a particular day not by any act of their own, but by the act of the Court itself, they are entitled to do it at the first subsequent opportunity. Where therefore, after previous attempts to execute a decree dated 7th

LIMITATION ACT (XV OF 1877). s. 5—*continued.*

September 1877, an application for transfer of the decree under s. 223 of the Civil Procedure Code was made and granted on the 2nd September 1889, and on the 9th of September (the Court having been closed from the 3rd to the 8th inclusive on account of the *Mohurrum*) the decree-holder applied for execution under s. 230 of the Code:—*Held*, that he was entitled to the benefit of the rule laid down in s. 5 of the Limitation Act upon the broad principle above stated. *Shooshee Bhusan Rudro* v. *Govind Chunder Roy*, I. L. R. 18 Calc. 231, applied in principle. PEARY MOHUN AICH *v.* ANUNDA CHARAN BISWAS.

[I. L. R. 18 Calc. 631

2.—s. 5.—*Time occupied in seeking review of judgment—Computation of time for appeal—Discretion of Court.*] An appellant is not entitled as of right to the exclusion of the time occupied by him in seeking a review of judgment, in the computation of the time within which his appeal is preferred. Where it appeared that the application for review proceeded on grounds dealt with in the judgment sought to be reviewed and on the discovery of fresh evidence which was made nearly three months before the application, the Court declined to exercise its discretionary power to exclude the time so occupied. GOVINDA *v.* BHANDARI.

[I. L. R. 14 Mad. 81

3.—s. 5 and s. 14.—*"Sufficient cause" to excuse delay—Mistake in law.*] Land was sold in execution of a decree which was passed against the defendant for a sum exceeding Rs. 5,000. A suit to set aside the sale was instituted in a subordinate Court and was dismissed. The plaintiff, who desired to appeal against the decree dismissing his suit, was advised that the appeal lay to the High Court in which a memorandum of appeal was accordingly filed. On its appearing that the value of the property sold was less than Rs. 5,000, the High Court returned the memorandum of appeal for presentation to the District Court. The District Judge rejected it on the ground that it was barred by limitation, holding that the delay caused by the error, which the appellant committed in taking proceedings in the wrong Court, could not be excused:—*Held*, that the District Judge should have decided whether the appellant, under the special circumstances of the case in appealing to the High Court, acted on an honest belief formed with due care and attention, so as to bring the case within s. 14 of the Limitation Act, and enable the Judge to admit the appeal under s. 5. A mistake in law may be under some circumstances a "sufficient cause" within the meaning of s. 5 of the Limitation Act for admitting an appeal presented out of time. KRISHNA *v.* CHATHAPPAN.

[I. L. R. 13 Mad. 269

4.—s. 5.—*Sufficient cause—Mistake in law.*] *Per* MAHMOOD, J.—A bare mistake of law is not a "sufficient cause" within the meaning of s. 5 of the Limitation Act for extending the period of

LIMITATION ACT (XV OF 1877), s. 5—*continued.*

limitation. *Huro Chunder Roy* v. *Surnamoyi*, I. L. R. 13 Calc. 266, dissented from. BECHI *v.* AHSAN-ULLAH KHAN.

[I. L. R. 12 All. 461

5.—s. 5.—*Leave to appeal after time expired—Sufficient cause—Two suits brought at same time by executors raising same questions of construction in respect of the same will—Similar decision in both—Appeal by a defendant in one suit and decree of Court of First Instance reversed—Consequent application by plaintiffs for leave to appeal in second suit.*] The plaintiffs filed two suits (A and B) at the same time as executors of the will of one *D M*. In suit A they sued the two sons (*G* and *V*) of their testator for the purpose of having his will construed and of ascertaining the shares of his property taken under it by his said two sons respectively. Suit B was filed by them against *G*, one of the said sons of the testator, and against three other persons to whom he had mortgaged his interest in his father's estate. They alleged that *G* had made over possession of the whole of his father's estate to the mortgagees, and that they refused to give it up. The plaintiffs submitted that, under the mortgage, no charge was created, save upon *G*'s individual interest in the estate, and they prayed for a declaration as to the extent of the mortgage, for an order for possession, for an account, &c., &c. Suit A was heard and decided on the 15th August 1889, and after argument, the Court of First Instance, construing the will, held that the fourth defendant, *G*, was entitled absolutely to certain property situate at the Girgaum Back Road in Bombay. Immediately after the said decree was made, suit B was called on for hearing before the same Judge. As the questions raised in both suits were the same, a decree in this suit was passed at once, without argument, in accordance with the construction put upon the will in suit A. Against the decree in suit A, *V* (one of the defendants therein), appealed, and, on the 27th February 1890, the Appeal Court reversed the decree of the Court below, and held that *G* was not entitled to an absolute estate in the above-mentioned property, but was entitled only to be paid the income thereof for his life. The plaintiffs in the present suit, being executors and not personally interested, had taken no steps to appeal from the decree of the 15th August. As soon, however, as the decree in suit A was reversed, they proposed to have the decree in suit B amended, so as to be in accordance with the construction put upon their testator's will by the Appeal Court. The defendants refused to consent, and the plaintiff moved for leave to file an appeal, although the time limited for appealing had expired. It was contended that the fact they were executors and trustees and, as such, could not appeal, save at their own risk, was "sufficient cause," under s. 5 of the Limitation Act (XV of 1887), for their delay until the appeal in the other suit had been decided:—*Held*, refusing the application, that no sufficient cause was shown for the plaintiffs' delay. The two suits were quite independent of each other. The plaintiffs thought proper to bring this second

LIMITATION ACT (XV OF 1877), s. 5— *continued.*

suit against the mortgagees, and they got a decision. If they were not satisfied, they should have appealed within the proper time. There was nothing in their position, as executors, to entitle them to any special consideration. THUCKER VUSSONJI MOWJI *v.* CANJI PURBHUT.

[I. L. R. 14 Bom. 365

6.—s. 5.—*"Sufficient cause"—Decree in suit for redemption—Appeal by mortgagee—Cross-objections filed by the mortgagors—Withdrawal of the appeal by the mortgagee—Application by mortgagors for extension of time to appeal.*] On the 1st March 1886 the plaintiffs (the mortgagors) obtained a redemption decree against the defendant (mortgagee) whereby it was ordered that, upon payment by the plaintiffs of Rs. 649-11-0 to the defendant, the mortgaged property should be redeemed. On the 19th April 1886 the defendant appealed to the High Court. On the 17th December 1886 the plaintiffs filed a cross-objection to the decree. On the 15th July 1890 the defendant obtained an order from the High Court allowing him to withdraw his appeal, and the plaintiffs consequently lost their opportunity of urging the cross-objection. On the 3rd September 1890 the plaintiffs applied, under s. 5 of the Limitation Act (XV of 1877), for an extention of time, for appealing against the decree of the 1st March 1886:—*Held*, that the withdrawal of the appeal, by which the plaintiffs lost their opportunity of having their cross-objection heard, afforded no sufficient reason for enlarging the time for the cross-appeal which he might have presented. CHUDASAMA MANABHAI MADARSANG *v.* ISHWARGAR BUDHAGAR.

[I. L. R. 16 Bom. 249

7.—s. 5.—*Application insufficiently stamped—Sufficient cause for admitting application after period prescribed—Application for review—Court-Fees Act (VII of 1870), ss. 6, 28.*] On the 26th January 1889 an application was presented to the Munsarim of the District Judge's Court for review of a judgment passed on the 19th December 1888. The application was insufficiently stamped, and the Munsarim endorsed on it "stamp insufficient." On this a dispute ensued between the pleader for the applicant and the Munsarim as to the sufficiency of the stamp. On the 25th April 1889 the deficiency pointed out by the Munsarim was made good. On the 26th May the Judge admitted the application, on the applicant paying the court-fee payable on an application presented on or after ninety days from the date of the decree:—*Held*, that s 6 and the first paragraph of s. 28 of the Court-Fees Act (VII of 1870) were applicable; that there was no mistake or inadvertence within the meaning of the second paragraph of s. 28; that the Judge had no power under the circumstances to admit the application as one presented after ninety days from the date of the decree; that there was no presentation within ninety days of an application which could have been received; that no sufficient cause had been shown, within the meaning of s. 5 of the Limitation Act, for not making the application within ninety days; and

LIMITATION ACT (XV OF 1877), s. 5— *concluded.*

that the application was consequently barred by limitation and ought to have been rejected. MUNRO *v.* CAWNPORE MUNICIPAL BOARD.

[I. L. R. 12 All. 57

8.—s. 5.—*Appeal filed beyond time—Order for admission of such appeal without notice to respondent.*] The order for admission of an appeal under s. 5 of the Limitation Act (XV of 1877) made before issue of notice to the respondent, is an *ex-parte* order, and cannot bind him. MULNA AMAD *v.* KRISHNAJI GANESH GOBOLE.

[I. L. R. 14 Bom. 594

9.—s. 5, para. 2.—*Application for leave to appeal to Privy Council.*] The provisions of the second paragraph of s. 5 of the Limitation Act (XV of 1877) do not extend to applications for leave to appeal to Her Majesty in Council. *Lakshmi* v. *Ananta Shanbhaga*, I. L. R. 2 Mad. 230, and *Ganga Gir* v. *Balwant Gir*, Weekly Notes, 1881, p. 130, referred to. IN THE MATTER OF the PETITION OF SITA RAM KESHO.

[I. L. R. 15 All. 14

—— s. 6.

See s. 7.

[I. L. R. 17 Calc. 263

———, s. 7.

See s. 8.

[I. L. R. 16 Mad. 436

1.—s. 7, and s. 6.—*Bengal Act (VIII of 1869).—Suit for arrears of rent—Disability of minority.*] In a suit under Bengal Act VIII of 1869 for arrears of rent, which accrued during minority, the plaintiff is not entitled to a fresh period of limitation under ss. 6. and 7. of the Limitation Act, 1877. *Dinonath Panday* v. *Roghoonath Panday* 5 W. R. Act X 41; *Behari Lall Mookerjee* v. *Mongolanath Mookeejee*, I. L. R. 5 Calc. 110; *Golap Chand Nowluckka* v. *Krishto Chunder Das Biswas*, I. L R. 5 Calc. 314; *Khoshelal Mahton* v. *Gonesh Dutt*, I. L. R. 7 Calc. 690; and *Phoolbas Koonwur* v. *Lalla Jogeshur Sahoy*, L. R. 3 I. A. 7; I. L. R. 1 Calc. 226, explained. *Khetter Mohun Chuckerbutty* v. *Dinabashy Shaha*, I. L. R. 10 Calc. 265, distinguished. GIRIJA NATH ROY v. PATANI BIBEE.

[I. L. R. 17 Calc. 263

2.—s. 7.—*General principal of law as to the disability of minors—Provisions of the Civil Procedure Code (Act XIV of 1882)—Minor represented by a guardian.*] Section 7 of the Limitation Act, strictly speaking, only applies to cases dealt with by that Act itself. The provisions of the Civil Procedure Code must, in the absence of anything to the contrary, be deemed to be subject to the general principle of law as to the disability of minors, which is that time does not run against a minor, and the circumstance that a minor has been represented by a guardian does not affect the question. MORO SADASHIV *v.* VISAJI RAGHUNATH.

[I. L. R. 16 Bom. 536

LIMITATION ACT (XV OF 1877), s. 7—*continued.*

3.—s. 7.—*Minor plaintiff—Application for execution by guardian—Limitation Act (XV of 1877), Art. 179.*] *A* obtained a decree on the 22nd July 1881 and made several applications for execution. After the death of *A*, his heirs, who were minors, made another application for execution through their mother, who was their certificated guardian, on the 25th of March 1889. No further steps were taken during the next three years, but on the 1st of April 1892, the minors through their mother again applied for execution:—*Held*, that the application for execution was not barred by s. 4 of the Limitation Act, read with Art. 179 of the second schedule, but that the operation of the Act was arrested by s. 7. Article 179 provides several points of time from which the period of three years shall begin to run, and for the purposes of the Limitation Act the period which begins from each point is a separate period, and if the person entitled is under a disability at the time when any one of such periods commences, the operation of the Act is suspended during the continuance of the disability by the operation of s. 7. *Mon Mohun Buksee* v. *Gunga Soondery Dabee*. I. L. R. 9 Calc. 181, approved. LOLIT MOHUN MISSER *v.* JANOKY NATH ROY.

[I. L. R. 20 Calc. 714

4.—s 7, and s. 8.—*Disability of minority—Execution of decree—Joint decree-holders.*] A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father, and joined as defendants certain persons who were in possession of part of the property under alienations made by the father but alleged in the plaint to be invalid as against the family. In 1875 a decree was passed in favour of the plaintiffs in the above suit. No application for the execution of the decree was made by either the first or second plaintiff; but the third plaintiff, having attained his majority in June 1881, applied for execution in April 1884: his application was opposed by two of the defendants. The District Judge made an order granting his application in respect of the one quarter share to which he was declared to be entitled under the decree:—*Held*, that the order of the District Judge was wrong, as neither s. 7 nor s. 8 of the Limitation Act was applicable to the case, and the application was accordingly barred by limitation. Section 7 applies to cases in which there is either one decree-holder and he is a minor, or in which all the joint decree-holders are minors, or labour under some other disability. It does not seem to be intended to apply to cases in which the minor's interest can be protected by joint decree-holders who are also interested in the subject-matter of the decree. SESHAN *v.* RAJAGOPALA. RAJAGOPALA *v.* RAMANADA.

[I. L. R. 13 Mad. 236

5.—s. 7, and ss. 9, 19—*Minority of plaintiff—General Clauses Act (I of 1868), s. 3, cl. 2—Acknowledgment.*] Suit to recover principal and interest due on a registered bond executed by

LIMITATION ACT (XV OF 1877), s. 7—*concluded.*

defendants in favour of the plaintiff's father. The date of the bond was 20th June 1870; the principal sum was payable on 20th June 1872; the plaintiff's father died in 1875; the defendants made acknowledgments of their liability in June 1877; the plaintiff came of age in 1885, and this suit was brought on 11th August 1887:—*Held*, the suit was not barred by limitation. Section 19 of the Limitation Act gives a new period of limitation, not an extension of the old period; and the plaintiff, being a minor at the date from which the new period was to be reckoned (*viz.*, the acknowledgment), fell within the wording of s. 7. VENKATARAMAYYAR *v.* KOTHANDARAMAYYAR.

[I. L. R. 13 Mad. 135

———, s. 8.

See s. 7.

[I. L. R. 13 Mad. 236

1.—s. 8.—*Joint decree-holders—Disability of minority—Civil Procedure Code, 1882, ss. 231, 258—Execution of decree.*] Section 8 of the Limitation Act does not appear to include execution-creditors, and the classes of persons contemplated by it are joint creditors or joint claimants, one of whom is under some disability, whilst there are others who can give a valid discharge in regard to his interest without his concurrence. The question whether one of several decree-holders can enter satisfaction on behalf of all is one of procedure, and a rule of decision must be looked for in the Civil Procedure Code. Sections 231 and 258 of that Code appear to show that it is not the act of the joint decree-holder but the act of the Court executing the decree that is intended to operate as a valid discharge. Section 8 of the Limitation Act applies only to those cases in which the act of the adult joint owner is *per se* a valid discharge SESHAN *v.* RAJAGOPALA. RAJAGOPALA *v.* RAMANADA.

[I. L. R. 13 Mad. 236

2.—s. 8 and s. 7.—*Disability of one of two joint claimants—Transfer of Property Act (IV of 1882), s. 99—Usufructuary mortgage—Suit to set aside sale in 'execution' of decree.*] In a suit by the two sons of a usufructuary mortgagor (deceased) to set aside the sale of the mortgaged premises, which had taken place in execution of a money-decree obtained by the mortgagee it appeared that the suit, if brought by the first plaintiff alone, would have been barred by limitation, but that it would not have been so barred, if it had been brought by second plaintiff alone, who had not attained his majority three years before the suit:—*Held*, that the sale in execution sought to be set aside was illegal under Transfer of Property Act, s. 99, but that the suit to set it aside was barred by limitation VIGNESWARA *v.* BAPAYYA.

[I. L. R. 16 Mad. 436

———, s. 9.

See s. 7.

[I. L. R. 13 Mad. 135

LIMITATION ACT (XV OF 1877)—*contd.*

——, s. 10.

See ART. 120.

[I. L. R. 16 Mad. 456
[I. L. R. 20 Calc. 51

1.—s. 10.—*Act XI of* 1859, *s.* 31—*Collector—Trustee—Suit for surplus sale-proceeds of sale for arrears of revenue.*] Where *A* instituted a suit in November 1889 to recover from the Secretary of State for India in Council the surplus sale-proceeds of three *taluks* sold for arrears of Government revenue on 3rd October 1877, which sale-proceeds were in the hand of the Collector:—*Held*, that s. 31 of Act XI of 1859 did not vest the surplus sale-proceeds in the Collector as trustee, that a deposit did not necessarily create a trust, and that therefore s. 10 did not apply. SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI.

[I. L. R. 18 Calc. 234

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR.

[I. L. R. 20 Calc. 51

2.—s. 10.—*Suit against a trustee.*] The plaintiff sued his father in 1887 for a declaration of his title to, and for possession of, certain property as being *stridhanam* property of his late mother, whose only son he was. The plaint alleged that some of the property had been given to the plaintiff's mother about the time of her marriage in 1836; that in 1843 her father had appointed the defendant trustee of the property for the plaintiff and his mother, and that further sums had been since paid to the defendant in his capacity of trustee on account of the *stridhanam* of the plaintiff's mother, and that he had traded with the property and misappropriated it:—*Held*, that under Limitation Act, s. 10, the suit was not barred by limitation on the allegations in the plaint. SETHU *v.* KRISHNA.

[I. L. R. 14 Mad. 61

3.—s. 10.—*Trustee for specific purposes—Will, construction of—Void clause in will and consequent intestacy—Suit by heir against executor as trustee for specific purposes.*] *G* died without issue in 1854. By his will he appointed three executors, and after making certain bequests he directed as follows:—"After all the above matters shall have been settled, whatever property of mine may remain, that remaining property shall be disposed of in a righteous manner, in a pious and charitable way, as may appear advisable to all my three executors. It shall be disposed of in such manner that people may speak well of me, and that all my three heirs may acquire great fame." The last surviving executor (the brother's widow), died in 1868, leaving a will, whereby she appointed four executors, and confirmed and continued the provisions of *G's* will. In 1886 *C*, one of *G's* heirs, assigned all his interest in *G's* estate to the plaintiff, who in 1887 filed this suit for administration. He contended that the above claim in the will was void for uncertainty; that there was, therefore, an intestacy as to the residue of the

LIMITATION ACT (XV OF 1877), s. 10—*concluded.*

estate; and that the executors held such residue in trust for *G's* heirs within the meaning of s. 10 of the Limitation Act (XV of 1877); and that the suit was, therefore, not barred:—*Held*, that s. 10 of the Limitation Act did not apply, and that the suit was barred by limitation. The executors of *G* were, no doubt, trustees, and for some specific purposes property became vested in them under the will, but with regard to the residue there was no trust declared and no direction given to distribute it among the heirs-at-law. In the absence of such a trust or direction the executors could not be held to be express trustees, or trustees for a specific purpose, and it is to such trustees alone that the section applies. NANALAL LALLUBHOY *v.* HARLOCHAND JAGUSHA.

[I. L. R. 14 Bom. 476

1.—s. 12.—*Act XXIV of* 1839, *appeal under—Time for obtaining copy of decree and judgment.*] Limitation Act, s. 12, is applicable to an appeal to His Excellency the Governor in Council, under the rules made by virtue of Act XXIV of 1839 against a decree passed by the Agent to the Governor, and assuming the time for such an appeal to be three months from the date of the decision, the time necessary for procuring copies of decree and judgment appealed against may be deducted:—*Held*, however, that no time for such an appeal was fixed. MAHADEVI *v.* VIKRAMA.

[I. L. R. 14 Mad. 365

2.—s. 12.—*Application for certificate for appeal to Privy Council—Limitation Act (XV of* 1877), *art.* 177.] In computing the period of limitation for an application for a certificate admitting an appeal to Her Majesty in Council, the time occupied in obtaining copies of the decree and judgment sought to be appealed against cannot be excluded, this section not being applicable. ANDERSON *v.* PERIASAMI.

[I. L. R. 15 Mad. 169

3.—s. 12, s. 5, and art 152.—*Civil Procedure Code, ss.* 542, 587—*Time requisite for obtaining copy of decree—Exclusion of time between delivery of judgment and signing of decree—Exclusion of time between furnishing of estimate of cost of copy and compliance with estimate.*] Judgment was pronounced by the Court of First Instance on the 23rd May 1887. The decree was signed on the 31st May. An application for copies was made by the defendants on the same day. Information of the estimate of the cost of copies was given to them on the 1st June, but they did not comply with that estimate until the 9th June. The copies were delivered on the 11th June. On the 30th June, the defendants filed their memorandum of appeal in the lower Appellate Court which, on an office report that it was within time, admitted it, and fixed the 19th August for the hearing. On the 1st August another office report was submitted, which showed that the appeal was beyond time. Accordingly the Judge on the 2nd August, directed the defendants to be informed that their

LIMITATION ACT (XV OF 1877), s. 12— *continued.*

appeal was dismissed. On the 27th August, however, the defendants presented a petition to the Judge, in consequence of which he re-admitted the appeal, and cancelling his order of the 2nd August, directed that the appeal should be heard:—*Held*, that the appeal was barred by limitation under Art. 152, Sch. II of the Limitation Act (XV of 1877). Section 5 of the Limitation Act cannot be applied in making the computation of time provided for by s. 12, and does not become applicable until after such computation has been made. *Raj Coomar Roy* v. *Mahomed Waris*, 7 W. R. 337, dissented from. In computing the time to be excluded under s. 12 of the Limitation Act from a period of limitation, the time "requisite for obtaining a copy" does not begin until an application for copies has been made. If, therefore, after judgment, the decree remains unsigned, such interval is not to be excluded from the period of limitation, unless, an application for copies having been made, the applicant is actually and necessarily delayed through the decree not having been signed. *Beni Madhub Mitter* v. *Matungini Dassi*, I. L. R. 13 Calc. 104, dissented from. *Per* EDGE, C. J., BRODHURST and YOUNG, JJ.—A Court, in computing under s. 12 of the Limitation Act, 1877, the time requisite for obtaining a copy of a decree or of a judgment, has no discretion, and is confined to ascertaining for the purposes of such computation the time occupied by the office, after application made, in preparing the estimate, and, after payment of the amount of the estimate has been made, the time occupied by the office in preparing the copy or copies ready to be delivered to the party who has applied for them. *Per* EDGE, C. J.—The only section in the Limitation Act which enables a Court to admit an appeal or an application which is presented beyond the period of limitation prescribed by that Act, is s. 5. *Per* MAHMOOD, J.—Where there is delay in compliance with the estimate which is unavoidable and due to causes beyond the control of the applicant, such delay may be included in "the time requisite for obtaining a copy." Whether or not such delay is unavoidable is a question of fact in each case. BECHI v. AHSAN-ULLAH KHAN.

[I. L. R. 12 All. 461

4.—s. 12, s. 5, and art. 156.—"*Time requisite for obtaining a copy of the decree appealed against*"—*Neglect of Court officials in issuing copies.*] A decree of a lower Appellate Court was passed on the 26th March 1888, and an appeal therefrom was presented to the High Court on the 6th July, or twelve days beyond the time allowed by Art. 156, Sch. II of the Limitation Act (XV of 1877). An application for a copy of the judgment under appeal was made by the appellants on the 28th March, and the 29th March was fixed by the office as the date when the estimate of the cost of such copy was to be delivered, and it was delivered on that day. The estimate was not complied with until the 5th April, when the appellants put in the necessary stamp paper according to the estimate. Upon the entry of the stamp paper no

LIMITATION ACT (XV OF 1877), s. 12— *continued.*

intimation was made by the office to the appellants as to when the copy would be ready for delivery. The copy was delivered on the 10th April:—*Held*, that under s. 12 of the Limitation Act, the appellants were entitled to a deduction of the whole period between the 28th March and the 10th April, and that, if this were not so, the appeal should be admitted under s. 5 of the Act. The words in s. 12, "the time requisite for obtaining a copy of the decree appealed against" imply that the appellant is not to lose his right of appeal by reason of the neglect of the officials who issue copies, or who are required to give notice when such copies are ready. SHEOGOBIND v. ABLAKHI.

[I. L. R. 12 All. 105

5—s. 12, s. 5, and art. 170—*Application for leave to appeal as a pauper—Time requisite for obtaining copy of decree—Exclusion of time between delivery of judgment and signing of decree.*] Judgment was pronounced by the lower Appellate Court, dismissing the appeal of the plaintiff, on the 29th March 1887. The decree was signed by the Judge on the 1st April, but, in accordance with s. 579 of the Civil Procedure Code, it bore date the day on which the judgment was pronounced. On the 15th April the plaintiff applied for a copy of the decree; on the 16th she received notice that the estimate of the costs of preparing the copy was prepared; on the 19th she paid into Court the amount required by the estimate. She had notice to attend on the 23rd for delivery to her of the copy, and on the 25th she attended and received the copy. On the 12th May she presented in the High Court, to the proper officer, an application, under s. 592 of Code, for leave to appeal as a pauper:—*Held*, that the application was barred by limitation under Art. 170, Sch. II of the Limitation Act (XV of 1877), and that s. 5 of the Act did not apply. *Per* EDGE, C. J.—In computing the period of limitation prescribed for an appeal or for an application for leave to appeal as a pauper, where the decree appealed against is not signed until a date subsequent to the date of delivery of judgment, the intermediate period should, under s. 12 of the Limitation Act, be excluded if the delay in signing the decree has delayed the appellant or applicant in obtaining a copy of the decree, and not otherwise. *Bani Madhub Mitter* v. *Matungini Dassi*, I. L. R. 13 Calc. 104, referred to. A delay caused by the carelessness or negligence of a party applying for copy of decree, such as negligence in coming forward to pay the money required, cannot be taken into consideration or allowed for in computing the time requisite for obtaining the copy. The time requisite, within the meaning of s. 12 of the Limitation Act, does not mean requisite by reason of the carelessness or negligence of the applicant: it means the time occupied by the officer who has got to provide the copy, in making the copy. The important date, with reference to s. 12 and Art. 170, is not the date when the copy of the decree is delivered, but the date when it is ready for delivery to the applicant if the applicant

LIMITATION ACT (XV OF 1877) s. 12—*concluded.*

chooses to apply, where he has had notice that the copy will be ready on that date. PARBATI *v.* BHOLA.

[I. L. R. 12 All. 79

——, s. 14.

See s. 5.

[I. L. R. 13 Mad. 269

1.—s. 14.—*Computation of period of limitation—Suits for arrears of rent—Act X of* 1859.] The provisions of s. 14 of Act XV of 1877 are not applicable to suits for arrears of rent under Act X of 1859. NAGENDRO NATH MULLICK *v.* MATHURA MOHUN PARHI.

[I. L. R. 18 Calc. 368

2.—s. 14.—*Exclusion of time of proceeding with suit bonâ fide—Cause of like nature.*] Of six persons in whom was vested the obligee's interest under a hypothecation-bond, three brought a suit upon it in a District Court, and the other three brought a similar suit in a District Munsif's Court to recover, with interest, their respective shares of the sum secured. The former suit was dismissed as not being maintainable, and the latter was withdrawn. The present suit was brought by all six:—*Held*, that in computing the time within which the plaintiffs had to sue, the time occupied by them in prosecuting the former suits should be deducted. *Deo Prosad Sing* v. *Pertab Kairee*, I. L. R. 10 Calc. 86, followed. NARASIMMA *v.* MUTTAYAN.

[I. L. R. 13 Mad. 451

3.—s. 14.—*Exclusion of time former suit was being prosecuted—"Other cause of a like nature."*] The words "other cause of a like nature" in s. 14 of the Limitation Act (XV of 1877) mean some cause analogous to defect of jurisdiction. Where a suit was dismissed on the ground that the debt sued for was due not to the plaintiff alone, but to the plaintiff and his partner, the latter not having been joined in the suit; and where the plaintiff subsequently brought a fresh suit for the same debt, making his co-partner a party:—*Held*, that the case was not within s. 14 of the Limitation Act, and that the time during which the plaintiff had been prosecuting the former suit could not be excluded in computing the period of limitation prescribed for the second suit. *Ram Subhag Das* v. *Gobind Prasad*, I. L. R. 2 All. 622, and *Chunder Madhub Chuckerbutty* v. *Ram Coomar Chowdry*, 6 W. R. 184, referred to. *Deo Prasad Singh* v. *Pertab Kairee*, I. L. R. 10 Calc. 86, not followed. JEMA *v.* AHMAD ALI KHAN.

[I. L. R. 12 All. 207

4.—s. 14.—*Previous suit—Deduction of time.*] In August 1885 the plaintiff and defendant entered into an agreement of partnership in a certain venture. On the 2nd September 1887 the plaintiff filed a suit against the defendant in a District Munsif's Court to recover his share of the profits under the agreement. In his evidence the plaintiff stated that there had been a settlement of the accounts between himself and defendant. The suit was thereupon dismissed as being cognizable by the Court of Small Causes, and the plaint was returned on the 1st March 1889. On the 27th the plaint was filed in the Court of Small Causes, an addition having been made to it. The Court held that the addition was irregular, and on the 19th November permitted the plaintiff to withdraw his suit with permission to bring a fresh one. He accordingly instituted the present suit on 6th December 1889:—*Held*, that in computing the period of limitation, the period from 2nd September 1887 to 1st March 1889 should be deducted under Limitation Act, s. 14. SAMINADHA *v.* SAMBAN.

LIMITATION ACT (XV OF 1877), s. 14—*continued.*

[I. L. R. 16 Mad. 274

5.—s. 14.—*Application for transmission of decree—Proceedings bonâ fide in Court without jurisdiction.*] On the 2nd March 1887, *S* obtained a mortgage-decree against *P* in the Court of the Munsif of Hajipore. On the 9th September 1887, *S* applied for execution, and on the 7th November 1887 the mortgaged property was sold by the Hajipore Court. On appeal, on the 2nd September 1890, the High Court set aside the sale on the ground of want of jurisdiction. Thereupon, on the 6th September 1890, *S* applied to the Hajipore Court to transfer the decree for execution to the Munsif's Court at Muzaffarpur. On the 19th December 1890, *S* applied for execution to the Muzaffarpur Court. *L*, who had meanwhile purchased the mortgaged property from *P*, objected that the application was barred:—*Held*, that the application was not barred, as the application of the 6th September 1890 was a step in aid of execution, and also as s. 14 para. 3 of the Limitation Act clearly applied to the facts of the case, and under it the decree-holder was entitled to a deduction of all the time occupied in executing the decree in the Court having no jurisdiction, the application having been manifestly made in good faith. *Nilmony Singh Deo* v. *Bireswar Banerjee*, I. L. R. 16 Calc. 744, distinguished; *Latchman Pundeh* v. *Maddan Mohun Shye*, I. L. R. 6 Calc. 513, referred to. RAJBULLUBH SAHAI *v.* JOY KISHEN PERSHAD *alias* JOY LAL.

[I. L. R. 20 Calc. 29

6.—s. 14.—*Certificate granted by Collector under the Public Demands Recovery Act, suit to set aside.*] Where rent was payable jointly to certain wards of Court, and another proprietor, whose guardianship under the Court of Wards had ceased, and the Collector issued a certificate under Bengal Act VII of 1880, for a proportionate share of the rent due to the wards, in a suit to set the certificate aside as invalid, the plaintiff was allowed, under s. 14 of the Limitation Act, to deduct the period during which he was *bonâ fide* seeking redress from the Revenue authorities, who had no jurisdiction to deal with the questions raised by him, and the suit was held to be not barred by lapse of time. GIRJANATH ROY CHOWDHRY *v.* RAM NARAIN DAS.

[I. L. R. 20 Calc. 264

LIMITATION ACT (XV OF 1877)—*contd.*

1.—s. 15.—*Order prohibiting creditor from recovering debt—Attachment of debt—Civil Procedure Code, s.* 268—*Injunction or order staying suit.*] *Semble*—An order of attachment under s. 268 of the Civil Procedure Code is not an injunction or order staying a suit within the meaning of s. 15 of the Limitation Act (XV of 1877). SHIB SINGH v. SITA RAM.

[I. L. R. 13 All. 76

2.—s. 15.—*Attachment of debt secured by bond—Civil Procedure Code, ss.* 268, 485, 486—*Injunction or order staying suit.*] An attachment before judgment under s. 485 read with ss. 486 and 268 (*a*) of the Civil Procedure Code, of a debt secured by a bond, or an injunction obtained by a third party and restraining the attaching creditor from subsequently bringing the bond to sale in execution of his decree, is not an injunction or order staying the institution of a suit upon the bond by the obligee, within the meaning of s. 15 of the Limitation Act. *Shib Singh* v. *Sita Ram*, I. L. R. 13 All. 76, followed. COLLECTOR OF ETAWAH *v.* BETI MAHARANI.

[I. L. R. 14 All. 162

1.—s. 18.—*Fraud—Knowledge kept from the Official Assignee, of his right to sue for an account of assets fraudulently transferred by an insolvent—Burden of proving when first the plaintiff had clear and definite knowledge—Account, decree for.*] Prior to and in the year 1865 the defendant's brother *B* carried on an extensive business in Bombay and in China. The defendant and another brother (*A*) carried on a separate business under the name of *A H*. In December 1866 *B* became insolvent, and his property vested in the Official Assignee. The present suit was brought in 1887 against the defendant by the Official Assignee to recover certain property which he alleged belonged to the insolvent, and ought to be distributed among his creditors. The plaintiff alleged that in 1865 the insolvent was possessed of a very large amount of property, and that, being unwilling to meet his liabilities, he and his son and his two brothers, *viz.*, *A* and the defendant *R*, fraudulently concealed his property from his creditors, and in September 1866, he himself went to Daman, beyond British jurisdiction. In 1881 the plaintiff having obtained information that some of the insolvent's property was in the possession of his brother *A*, filed a suit (No. 473 of 1881) against *A* to recover it. That suit was referred to arbitration, and the plaintiff obtained a decree for Rs. 3,60,000. The plaintiff now alleged that, shortly before the hearing of that suit and subsequently, he had obtained information which led him to believe that the defendant had obtained, some of the insolvent's property for which he was accountable. The defendant had been made a party to the former suit, No. 473 of 1881, for the purpose of discovery only, and it was in the course of such discovery being given that some of the above information had been obtained. The plaint then set forth, in detail, the various items of claim in respect of which the plaintiff sought to make the defendant liable. The defendant pleaded that the claims were barred by limitation;—*Held*, by SCOTT, J., that the suit was not barred by limitation. There was sufficient evidence of fraud to bring the case under s. 18 of the Limitation Act (XV of 1877). The limitation only began to run from the time the fraud became fully known to the Official Assignee, which was not until December 1885. The knowledge required by s. 18 of the Limitation Act is not mere suspicion. It must be knowledge of such a character as will enable the person defrauded to seek his remedy in Court. The Court of Appeal (SARGENT, C. J. and BAYLEY, J.) confirmed the decree of the Court of First Instance, except as to one of the allowed items, which it held to be barred by limitation. *Held*, on appeal to the Privy Council: In order to make limitation operate when a fraud has been committed by one who has obtained property thereby, it is for him to show that the injured complainant has had clear and definite knowledge of the facts, constituting the fraud, at a time which is too remote for the suit to be brought. Suggestion of his having been defrauded does not amount to such knowledge as is required by s. 18, Act XV of 1877. In this suit it was established that the defendant receiving in 1869, upon a voluntary transfer, some of the insolvent's assets, joined and assisted him in defrauding his creditors; and that no disclosure of this fraud was made to the Official Assignee, while the defendant did what he could to prevent the latter from seeing the accounts of the assets transferred:—*Held*, therefore, that the burden of proof was on the defendant to show that the plaintiff had clear and definite knowledge of this fraud for more than the period of limitation. This burden had not been discharged by proof of the fact that some hints and clues had reached the Official Assignee which might have led to such knowledge: and *held*, that the Official Assignee had been kept from knowledge of his right to sue, within the meaning of s 18. A decree that the defendant should account to the Official Assignee for the assets received by him from the insolvent, after the date of the insolvency, was affirmed. RAHIMBHOY HABIBBHOY *v.* TURNER.

[I. L. R. 17 Bom. 341

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affirming on appeal RAHIMBHOY HABBIBHOY *v.* TURNER.

[I. L. R. 14 Bom. 408

———, s 19. *Col.*

1. Acknowledgment of Debts ... 601

See s 7.

[I. L. R. 13 Mad. 135

See ART. 64.

[I. L. R. 16 Mad. 339

See ART. 144—ADVERSE POSSESSION.

[I. L. R. 13 Mad. 467

See STAMP ACT, 1879, SCH. I, ART. 1.

[I. L. R. 15 All. 56

LIMITATION ACT (XV OF 1877) s. 19— *continued.*

(1) ACKNOWLEDGMENT OF DEBTS.

1.—s. 19.—*Acknowledgment in holograph will unsigned.*] In a suit against the legal representative of a deceased debtor to recover the amount of the debt, it appeared that the debt was contracted more than three years, but was payable less than three years, before suit. In bar of limitation the plaintiff relied upon an admission of the debt in a draft will, written by the testator, in the first line of which his name appeared:—*Held, per* WEIR, J., that the admission in the will did not constitute an acknowledgment under Limitation Act, s. 19. RAMASAMI *v.* MUTTUSAMI.

[I. L. R. 15 Mad. 380

2.—s. 19.—*Acknowledgment in writing—Deposition signed by a witness.*] In a suit brought in 189- to recover the principal and interest due on a bond, dated 1st September 1879, which provided for the repayment of the debt secured thereby within six months from the date of its execution, it appeared that the obligor had made a part payment of Rs. 50 on the 24th July 1882, which was endorsed on the bond. No other payments had been made, but the plaintiff pleaded in bar of limitation that the debt had meanwhile been three times acknowledged in writing. One of the acknowledgments relied upon was said to be contained in a deposition given by the obligor and signed by him, as a witness in a suit to which he was not a party:—*Held*, that an acknowledgment in order to satisfy the requirements of Limitation Act, s. 19, must be an acknowledgment of the debt as such and must involve an admission of a subsisting relation of debtor and creditor, and an intention to continue it until it is lawfully determined must also be evident. *Semble per* MUTTUSAMI AYYAR, J. (WILKINSON J., dissenting), that a deposition given and signed by a party as a witness in a suit is as much a writing contemplated by s. 19 as is his written statement or a letter addressed by him to a third party. VENKATA *v.* PARTHASARADHI.

[I. L. R. 16 Mad. 220

3.—s. 19.—*Acknowledgment of liability—Will of mortgagee—Suit for redemption.*] In a suit to redeem a *kanom* of 1805 the plaintiff set up in bar of limitation an acknowledgment contained in the will of the deceased mortgagee, who thereby devised to his son lands therein described as held by him on *kanom*. The mortgagor's name was not mentioned nor the date of the *kanom*, nor was there any further description of the land which however, was admitted to be the land in question in the suit:—*Held*, that the will constituted an acknowledgment under s. 19. UPPI HAJI *v.* MAMMAVAN.

[I. L. R. 16 Mad. 366

4.—s. 19.—*Manager of a joint Hindu family—Authority to acknowledge a family debt.*] The manager of a joint Hindu family has authority to acknowledge the liability of the family for the debts which he has properly contracted, so as to give a new period of limitation against the family from the time the acknowledgment is made. He

LIMITATION ACT (XV OF 1877), s. 19— *concluded.*

(1) ACKNOWLEDGMENT OF DEBTS—*concld.*

is an agent duly authorised in this behalf within the meaning of s. 19 of the Limitation Act. *Chinnaya Nayadu* v. *Gurunatham Chetti*, I. L. R. 5 Mad. 169, approved and followed. BHASKER TATYA SHET *v.* VIJALAL NATHU.

[I. L. R. 17 Bom. 512

5.—s. 19.—*Acknowledgment in writing—Evidence Act (I of* 1872), *ss.* 65, *and* 91—*Secondary evidence.*] Limitation Act, s. 19, must be read with Evidence Act ss. 65 and 91, and does not exclude secondary evidence in cases where such would be admissible under s. 65. *Shambhunath Nath* v. *Ram Chandra Shaha*, I. L. R. 12 Calc. 267, followed. CHATHU *v.* VIRARAYAN.

[I. L. R. 15 Mad. 491

———, s. 20.—*Agent, authority of, to make payment.*] An agent may be impliedly authorised within the meaning of s. 20 of the Limitation Act to make a payment of interest or principal before the expiration of the period prescribed. BIRJMOHUN LALL *v.* RUDRA PERKASH MISSER.

[I. L. R. 17 Calc. 944

———, s. 22.

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS.

[I. L. R. 14 All. 524

[I. L. R. 17 Bom. 29, 413

See PARTIES—ADDING PARTIES TO SUITS—RESPONDENTS.

[I. L. R. 13 All. 78

[I. L. R. 14 All. 154

See PLAINT—AMENDMENT OF PLAINT.

[I. L. R. 16 Mad. 319

1.—s. 22.—*Parties to suit—Transfer of defendants to category of plaintiff, effect of—Land Registration Act (Bengal Act VII of* 1876), *s.* 78.] *A* and *B*, two joint zemindars, having brought a *putni* within their zemindari to sale for arrears of rent purchased it themselves. During the existence of the *putni* a *durputni* had been created of which *C* was in possession. *A* instituted a suit against *C* to recover arrears of rent of the *durputni* for a period of three years, and joined *B* as a *pro formâ* defendant, alleging that he was away from home at the time of the institution of the suit and could not therefore join as co-plaintiff. *A's* proprietary interest was registered under the provisions of Bengal Act (VII of 1876), the Land Registration Act, but *B's* interest was not so registered. Prior to the suit coming on for hearing, but after the right to recover the rent for the first two out of the three years had become barred by limitation, assuming no suit to have been brought, *B* was transferred from the category of defendant in the suit into that of co-plaintiff. In answer to the suit *C* pleaded limitation, and

LIMITATION ACT (XV OF 1877), s. 22— *continued.*

also contended that the non-registration of *B's* interest precluded the plaintiffs from maintaining the suit at all (*A's* share not being specified), having regard to the provision of s. 78 of the Land Registration Act. The lower Appellate Court having dismissed the suit on this latter ground, and also held that the right to recover the rent for the first two out of the three years as suit was barred by limitation:—*Held* that when *B* was sued as a party-defendant he was made a party in violation of the rule applied in *Dwarka Nath Mitter* v. *Tara Prosunna Roy*, I. L. R. 17 Calc. 160, and that the suit was not therefore in the first instance properly brought. *B* not being properly on the record at all; that the effect of making *B* co-plaintiff was practically to institute a new suit on the date when he was so changed into co-plaintiff, and that the suit had been rightly dismissed on the ground of limitation so far as the rent of the first two years was concerned, but that the plaintiffs were entitled to a decree for the rent in respect of the third year, which was not barred by limitation at the time *B* was made co-plaintiff. JIBANTI NATH KHAN *v.* GOKOOL CHUNDER CHOWDRY.

[I. L. R. 19 Calc. 760.

2.—s. 22.—*Amendment of plaint—Defendant sued in different capacity from that originally stated.*] The creditor of a deceased trustee of a temple sued two persons, as his successors in office, to recover the amount of the debt. One of the defendants died; the other, who was the brother of the deceased, pleaded that other persons were joint trustees with him, and should have been impleaded with him: he also alleged that the debt in question was a private debt, and had not been incurred by the deceased as a trustee. The persons named were joined as defendants, and they repeated the above allegation. The plaintiff, thereupon, amended the plaint and prayed for a personal decree against the original surviving defendant, and the others were removed from the record. The amendment took place more than three years after the date when the debt was payable, but the suit had been instituted within that period:—*Held*, that the claim was not barred by limitation. SAMINATHA *v.* MUTHAYYA.

[I. L. R. 15 Mad. 417

3.—s. 22.—*Necessary party added after period of limitation expired—Objection for want of parties not taken.*] Where objection for want of parties jointly interested in the subject-matter of the suit was not taken by the defendants at any stage of the proceedings, nor was an issue framed upon the point:—*Held*, that the parties jointly interested with the plaintiff might be added, and that the suit should proceed, although the said parties were added after the period of limitation for bringing the suit had expired. *Kalidas Kevaldas* v. *Nathu Bhagvan*, I. L. R. 7 Bom. 217, distinguished. SHIREKULI TIMAPA HEGADE *v.* AJJIBAL NARASHINV HEGADE.

[I. L. R. 15 Bom. 297

LIMITATION ACT (XV OF 1877), s. 22— *concluded.*

4.—s. 22.—*Non-joinder of parties—Application to join necessary parties made within period of limitation refused by Court of First Instance—Application granted by Court of Appeal, but after period of limitation—Order to add parties operating nunc pro tunc—Delay the act of the Court.*] The plaintiffs, as sharers in certain rent alleged to be due by the defendants, sued to recover their share. The defendants contended that all the co-sharers were necessary parties. At the hearing on the 24th January 1889, the plaintiffs' co-sharers applied to be made co-plaintiffs and to be allowed to adopt what the plaintiffs had done in the suit. The application was rejected, and the suit was dismissed for want of parties. On appeal, the District Court in July 1890, holding that the lower Court ought to have joined the co-sharers, passed an order making them co-plaintiffs, and then confirmed the lower Court's decree on the ground that at the time (3rd July 1890) the co-sharers were made plaintiffs the suit was barred by limitation. On appeal to the High Court:—*Held*, remanding the case, that the order of the lower Appeal Court of the 3rd July 1890, allowing the co-sharers' application, which had been made on the 24th January 1889, but had been refused by the Court of First Instance, should be treated as operating *nunc pro tunc*, and that the co-sharers should be regarded as having been made parties to the suit when their application was made. The delay was attributable to the act of the Court, and the plaintiffs should not suffer from it. RAMKRISHNA MORESHWAR *v.* RAMABAI.

[I. L. R. 17 Bom. 29

5.—s. 22.—*Partnership—Non-joinder of parties—Suit in name of a firm by its manager—Addition of name of other partner as co-plaintiff—Misdescription of plaintiff—Civil Procedure Code (Act XIV of 1882), s. 27—Amendment of plaint.*] This suit was brought to recover a debt due to the firm of *K S*. The plaintiff was described as "the firm of *K S* by its manager *S S*." The defendants objected that one *M* was a partner in the firm and should be a party to the suit; he was joined as a co-plaintiff on the 27th January 1888. The defendants then contended that the suit was time-barred under s. 22 of the Limitation Act:—*Held*, that the case was one of mis-description and not of non-joinder, for the action was brought in the name of the firm by its manager. The order of the words in the vernacular plaint showed that *S*, the manager, did not sue in his own name. The defendants were entitled to have the name of the other partner disclosed, but it being found as a fact that *S* was entitled to sue for the firm, the addition of *M's* name on the record came within the provisions of s. 27 of the Civil Procedure Code. KASTURCHAND BAHIRAVDAS *v* SAGARMAL SHRIRAM.

[I. L. R. 17 Bom. 413

——, s. 23.

See ART. 120.

[I. L. R. 13 All. 126

[I. L. R. 20 Calc. 906

LIMITATION ACT (XV OF 1877), s. 23— *concluded.*

1.—s. 23.—*Disturbance of right of ferry—Nuisance—Continuing wrong—Cause of action.*] The disturbance of a right of ferry is in the nature of a nuisance (*Yard* v. *Ford*, 2 Saunders 172), and the cause of action in the case of a violation of this right is a continuing wrong within s. 23 of the Limitation Act. NITYAHARI ROY *v.* DUNNE.

[I. L. R. 18 Calc. 652

2.—s. 23, arts. 34, 35—*Suit for restitution of conjugal rights — Wife's refusal to return to her husband—Husband and wife.*] The refusal of a wife to return to her husband, and allow him the exercise of conjugal rights, constitutes a continuing wrong giving rise to constantly recurring causes of action on demand and refusal. Suits for the recovery of a wife or for the restitution of conjugal rights, though governed by Arts. 34 and 35 of Sch. II of the Limitation Act (XV of 1877), are not thereby taken out of the operation of s. 23 of the Act BAI SARI *v.* HIRA-CHAND

[I. L. R. 16 Bom. 714

HEMCHAND *v.* SHIV.

[I. L. R. 16 Bom. 715 note

See BINDA *v.* KAUNSILIA.

[I. L. R 13 All. 126

——, s. 26.

See ART. 144—INTEREST IN IMMOVEABLE PROPERTY.

[I. L. R. 16 Bom. 353

1.—s. 26.—*Construction of Statute—Act when applicable to Crown—Easement—Profit à prendre—Right of pasturage claimed by a village against Government—Prescription—Custom.*] The rule of construction according to which the Crown is not affected by a Statute, unless specially named in it, applies to India. *Semble*—The provisions of s. 26 of the Limitation Act (XV of 1877) do not apply to the Crown. The mere mention of the Crown in an Act has not the effect of making all its provisions applicable to the Crown, and sec. 26 does not relate to the limitation of suits, but to an entirely different matter, *viz.*, the creation of rights by the enjoyment of them, which is a branch of the substantive law. The section is clearly in prejudice of the Crown's rights, and the other provisions of the Act do not afford sufficient evidence of an intention that this section should apply to the Crown. The rule of English law, that a claim to a profit *à prendre* cannot be acquired by the inhabitants of a village either by custom or prescription, does not apply to a right of pasturage claimed by a village in the Presidency of Bombay as against the Government. The right of free pasturage has always been recognized as a right belonging to certain villages, and must have been acquired by custom or prescription. The plaintiffs, who were the inhabitants of the village of Dani Limbda, sued for themselves and the other inhabitants to establish their right to graze their cattle on the banks and the dry part of the village tank Chandola, and

LIMITATION ACT (XV OF 1877), s. 26— *concluded.*

for a perpetual injunction restraining the defendant from interfering with such right. The defendant contended (*inter alia*) that the tank was *kharabo* or waste land, that it had never been set apart under the Land Revenue Code, s. 38, for grazing purposes, and that the plaintiffs could not acquire, as against the Government, a right of grazing by prescription. The Court of First Instance held the defendant not excluded from the operation of s. 26 of the Limitation Act (XV of 1877), but found that there was a break in the period of prescription, and, therefore, rejected the plaintiffs' claim. The lower Appellate Court held that there was no break, and awarded their claim. On appeal by the defendant to the High Court:—*Held*, restoring the decree of the Court of First Instance, that the suit should be dismissed. Whether the plaintiffs' claim was considered with regard to s. 26 of the Limitation Act, or to the general law of prescription, it was essential that the user should have been as "*of right*" to graze cattle on the tank in question. But the right of free pasturage which certain villages enjoy according to the recognized custom of the country, and which was admittedly enjoyed by the plaintiffs' village, does not necessarily confer the right of pasturage on any particular piece of land, although it may confer the right of having sufficient land set apart for the purposes of the village, and in the absence of special circumstances pointing to the tank in question having been used for grazing by the villagers in exercise of a right other than and independent of the aforesaid right, the user by the plaintiffs could only be referred to that general right. SECRETARY OF STATE FOR INDIA *v.* MATHURABHAI.

[I. L. R. 14 Bom. 213

2.—s. 26—*Enjoyment as of right for twenty years—Right of ownership—Right of easement as distinguished from a right of ownership—Bombay Regulation (V of 1827), s. 1—User.*] In order to acquire an easement under s. 26 of the Limitation Act (XV of 1877), the enjoyment must have been by a person claiming title thereto as an easement as of right for twenty years. Evidence of immemorial user adduced in support of a right founded on ownership, does not, when that right is negatived, tend to establish an easement. *Quære*—Whether upon a correct construction of s. 1 of Regulation V of 1827, which applies to the acquisition of easements, the mere user would be sufficient to establish the right to the easement claimed. OHUNILAL FULCHAND *v* MANGALDAS GOVARDHANDAS.

[I. L. R. 16 Bom. 592

——, s. 28.

See ART. 47.

[I. L. R. 15 Bom. 299

See ART. 144.

[I. L. R. 15 Bom. 261

See MALABAR LAW—MORTGAGE.

[I. L. R. 13 Mad. 490

LIMITATION ACT (XV OF 1877), s. 28—*concluded.*

See ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.

[I. L. R. 14 All. 193

———, s. 28, and Arts. 91 and 95.—*Extinguishment of right and title—Plea of fraud—Fraudulent sale—Vendor's right to plead fraud after twelve years from the date of sale—Vendor and purchaser.*] In 1872 the plaintiffs induced the first defendant by fraud and misrepresentation to execute in their favour a deed of sale of the property in dispute. They did not pay the purchase-money, nor obtain possession of the property. The defendant remained in possession, and in 1873 mortgaged the property with possession to defendants Nos. 2 and 3, and in 1880 sold it to defendant No. 2. In 1884 the plaintiffs sued for possession of the property, relying on their title under the sale-deed. The defendant impeached the deed as fraudulent, and disputed the plaintiffs' title. The plaintiffs contended that, as the defendant had not sued to set aside the deed on the ground of fraud within three years, as provided by Art. 91 or 95 of the Limitation Act (XV of 1877), or within twelve years from the date of sale, it was too late for him to set up the plea of fraud:—*Held* (SCOTT, J., doubting), that the defendant's right to raise the plea of fraud was not barred by the law of limitation. *Per* SCOTT, J.:—There was another point of limitation which could be raised. The consideration-money was never paid by the plaintiffs, and possession was never given. There was no complete contract of sale passing the property. Therefore the plaintiffs' only right was to sue for specific performance of the contract. Such a suit, however, became barred in three years after the date of the contract. The plaintiffs, therefore, had lost their rights against defendant No. 1; and even if they had not, the present claim for possession as against defendants Nos. 2 and 3 must fail, as defendant No. 2 was mortgagee and defendant No. 3 was *bonâ fide* purchaser for value, and no satisfactory evidence was given by plaintiffs on whom lay the *onus*, that these defendants had notice of the deed of sale. *Per* JARDINE, J.:—Section 28 of the Limitation Act XV of 1877 does not apply to the case of defendants, who rely on an actual possession which has never been disturbed. HARGOVANDAS LAKHMIDAS *v.* BAJIBHAI JIJIBHAI.

[I. L. R. 14 Bom. 222

———, Art. 10.

See ART. 120.

[I. L. R. 14 All. 405, 529

1.—Art. 11.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 281—*Order disallowing claim to attached property.*] The effect of an order made under s. 281 of the Civil Procedure Code disallowing a claim to attached property, is to give the auction-purchaser a title as against the claimant unless the order is set aside by a suit; and a suit for that purpose can only be brought within a year from the date of the order. *Sardhari Lal* v. *Ambika Pershad*, I. L. R. 15 Calc. 521; L. R. 15 I. A. 123, referred to. KHUB LAL *v.* RAM LOCHUN KOER.

LIMITATION ACT (XV OF 1877), Art. 11—*concluded.*

[I. L. R. 17 Calc. 260

2.—Art. 11.—*Civil Procedure Code, s.* 283—*Order removing attachment—Party to execution—Proceedings.*] *A* in execution of a decree against *B* attached a house. *C* intervened and the property was released from attachment. *A* then brought a suit against *B* and *C* to establish the title of *B* to the house and obtained a decree. As against *B* the suit was *ex parte* throughout. In an appeal by *C* a decree was passed by consent of *A* and *C* reversing the decree appealed against. *B* now sued *C* and another, more than a year from the date of the order removing the attachment, to obtain adeclaration of title to the house:—*Held*, that since there was nothing to show that the order releasing the attachment was an order against the plaintiff the suit was not barred by limitation. GURUVA *v.* SUBBARAYUDU.

[I. L. R. 13 Mad. 366

3.—Art. 11.—*Civil Procedure Code*, 1882, *s.* 282—*Order in attachment proceeding, effect of—Judgment-debtor—Party against whom order in execution-proceedings was made.*] The plaintiff obtained a decree. The defendants appealed. At the hearing of the appeal in the District Court a question was raised as to whether the defendants were not barred by limitation from denying the genuineness and validity of the lease and mortgage, they having failed to do so in certain execution-proceedings which had taken place in 1890. It appeared that in execution of a decree against the father and the uncle of the defendants these lands had been attached. The plaintiff on that occasion had intervened, and set up his mortgage and lease which he produced. They were then held to be proved, and the lands were ordered to be sold subject to the plaintiff's mortgage. Upon these facts the District Judge held that, by the attachment of their lands in these execution-proceedings, the defendants had been subrogated either to the cause of the decree-holder or to that of the plaintiff who intervened, and, therefore, they were parties "against whom the order was made." That order became conclusive against them within one year from its date, as they did not bring a suit to establish their right (Art. 11, Sch. II, Limitation Act, 1877). He, therefore, confirmed the decree of the Court of First Instance. On second appeal to the High Court:—*Held*, reversing the lower Court's decree, that the defendants were not necessarily to be regarded as parties against whom the order in the execution-proceedings was made. Whether they were or not, depended on the facts of the case. The Court accordingly remanded the case that the District Judge might investigate the facts and pass a decree accordingly. AJIBAL NARASINHA HEGDE *v.* SHIREKOLI TIMAPA HEGDE.

[I. L. R. 17 Bom. 629

LIMITATION ACT (XV OF 1877)—*contd.*

——, Art. 13, and Art. 62.—*Civil Procedure Code (Act XIV of* 1882), *s.* 295—*Suit for a refund of assets paid to a wrong person under s.* 295.] An order under s. 295 of the Code of Civil Procedure (Act XIV of 1882) refusing a decree-holder's application for a rateable distribution of the assets realized by a sale or otherwise in execution of a decree, is not an order "in a proceeding other than a suit" within the meaning of Art. 13 of the Limitation Act (XV of 1877). On the 21st August 1885 the defendant attached, in execution of a money-decree, certain immoveable property belonging to his judgment-debtor. On the 18th January 1886, plaintiff, who held another decree against the same judgment-debtor, applied, under s. 295 of the Code of Civil Procedure, for a rateable distribution of the assets to be realized by the sale of the property attached. On the 19th March 1886 the attached property was put up for sale in execution of the defendant's decree. The defendant was allowed to buy the property at the sale and set off the purchase-money against the amount due to him under the decree under s. 294, and no money was, therefore, paid into Court. On the 14th June 1886 the Court held that, as no money had been paid into Court on account of the sale, no further proceedings could be taken on the plaintiff's application for a rateable share of the assets, and his application was accordingly rejected. Thereupon the plaintiff sued the defendant to compel him to refund the assets wrongly paid to him. The Court of First Instance decided in plaintiff's favour. The lower Appellate Court rejected the plaintiff's claim as barred by Art. 13, Sch. II of the Limitation Act, on the ground that the suit was not brought within one year from the date of the Court's order refusing the plaintiff's application under s. 295 of the Code of Civil Procedure:—*Held*, that the suit was not governed by Art. 13 of the Limitation Act. The order made under s. 295 of the Civil Procedure Code was no bar to the suit, and a suit to set it aside was unnecessary. *Gowri Prosad Kundu* v. *Ram Ratan Sircar*, I. L. R. 13 Calc. 159, dissented from. VISHNU BHIKAJI PHADKE *v.* ACHUT JAGANNATH GHATE.

[I. L. R. 15 Bom. 438

——, Art. 14.

See BOMBAY LAND REVENUE ACT, s. 135.

[I. L. R. 15 Bom. 424

——, Art. 30.—*Suit for value of goods carried by Railway Company, and lost.*] In January 1890 a box containing silver specie was delivered by the plaintiffs to the defendant Company in Bombay to be carried to Saugor. At the time of such delivery the contents of the box were declared, and an increased charge above the charge for ordinary parcels was paid. The box was lost during its transmission to Saugor, but no evidence was called by the defendants to show what was done with the box between Itarsi and Saugor. In 1893 the plaintiffs sued the defendants to recover its value:—*Held*, that the suit was not barred by limitation, and that Art. 30 of

LIMITATION ACT (XV OF 1877), Art. 30—*concluded.*

Sch. II of the Limitation Act did not, as was contended, apply to the case. RAISETT CHANDMULL *v.* G. I. P. RAILWAY CO.

[I. L. R. 17 Bom. 723

——, Arts. 34, 35.

See s. 23.

[I. L. R. 16 Bom. 714, 715 note

[I. L. R. 13 All. 126

See ART. 120.

[I. L. R. 13 All. 126

——, Art. 44.

See ART. 142.

[I. L. R. 14 Bom. 279

1.—Art. 47 and Art. 144.—*Ejectment, right to sue in—Order made n proceeding where a dispute exists concerning the possession of land—Criminal Procedure Code (Act X of* 1872), *s.* 530—*Criminal Procedure Code (Act X of* 1882), *s.* 145.] A zemindar on the 3rd May 1876 agreed to let lands on lease to *A* and his co-sharers, who, on the zemindar's failure to carry out the terms of the agreement, brought a suit for specific performance and obtained a decree against him in 1879. The zemindar having neglected to perform the agreement, the Court in December 1881 made an order for the execution of a *pottah*, and directed that the *pottah* should take effect from the date of the original agreement. The *pottah* was executed on the 19th December 1881. In 1880 *A* instituted a proceeding under s. 530 of the Criminal Procedure Code (X of 1872), which corresponds with s. 145 of Act X of 1882; but the application was dismissed in December 1880, *A* having failed to establish possession. *B*, having purchased the interests of two of the co-sharers instituted a suit on the 11th May 1888 against certain persons who had been let into possession by the zemindar, the other co-sharers being added as plaintiffs:—*Held*, that Art. 47, Sch. II of the Limitation Act, did not apply, no right to sue in ejectment being in existence in December 1880, the right with which *A* was clothed under the decree not having been perfected till December 1881 when the *pottah* was executed. *Held*, further, that the suit was not barred under Art. 144, as limitation did not commence to run until the *pottah* had actually been executed. Article 47 of the Limitation Act contemplates a right to sue in ejectment being in existence at the time of the passing of an order under s. 145 of the Code of Criminal Procedure. BOLAI CHAND GHOSAL *v.* SAMIRUDDIN MANDAL.

[I. L. R. 19 Calc. 646

2.—Art. 47.—*Limitation Act (XIV of* 1859), *s.* 1, *cl.* 7—*Order of Mamlatdars Court as to possession—Bombay Regulation V of* 1827—*Limitation Act (IX of* 1871), *s.* 29; *(XV of* 1877), *s.* 28—*Extinction of title—Bar of remedy—Statutes of limitation—Construction of Statutes.*] In 1864 *A* sued his co-sharer *B* in the Mamlatdar's Court for possession of certain land, and obtained a decree. In 1874 *B* got possession of the land by

LIMITATION ACT (XV OF 1877), Art. 47 —*concluded.*

inducing the tenants to attorn to him. In 1880 *A* conveyed the land to *C* by a deed of sale, and in 1886 *C* filed a suit against *B* to obtain possession of the land so sold to him by *A*. He alleged that any claim which *B* had to the land as co-sharer was extinguished by limitation, inasmuch as he had brought no suit within three years from the date of the Mamlatdar's decree against him of July 1864 to get rid of the effects of that decision (see cl. 7 of s. 1 of Limitation Act XIV of 1859). The lower Court disallowed this contention. It also held that the Mamlatdar's decision as to possession did not affect a co-sharer's claim for partition. It, therefore, awarded the plaintiff *C* only the share of his vendor *A* in the property. On appeal to the High Court:—*Held*, confirming the decision of the lower Court, that although, under cl. 7 of s. 1 of the Limitation Act (XIV of 1859), *B* could not after July 1867 have sued to assert his title to the land comprised in the Mamlatdar's order of July 1864, nevertheless his title to the said land was not extinguished, and the possession which he obtained in 1874 could properly be referred and ought to be referred to his then subsisting title. Consequently, any one who after his re-entry in 1874 disputed his title would have to prove his own as against *B's* title independently of any help from the Statute of Limitation. *Held*, also, that a suit for the partition of property comprised in a Mamlatdar's order is not a suit to recover such property, and, therefore, does not fall within cl. 7 of s. 1 of Act XIV of 1859; and whether that property is the only one of which a partition is claimed, or whether it is one of several such properties, is not material. In the Presidency of Bombay it is only in those cases in which the possession of property has been of such a duration and character as to come within Regulation V of 1827 that the Limitation Act (XIV of 1859) has been held to extinguish the original right to the property. *Quære*—Whether (assuming that the effect of the Limitation Act XIV of 1859 was similar to the effect of s. 29 of the Limitation Act of 1871 and s. 28 of the Act of 1877) cl. 7 of s. 1 of Act XIV of 1859, which in terms relates to "suits to recover the property comprised in the order" of the Mamlatdar, would have barred a suit by *B* not based on a claim to recover the property (which implies a claim to exclude the defendant therefrom altogether), but one merely for obtaining a share of such property on the footing that *A*, who had been successful in the Mamlatdar's Court, held it for himself and *B* jointly. Statutes of limitation being in limitation of common right are not to be extended by construction to cases not clearly included within their terms. PARASHRAM JETHMAL *v.* RAKHMA.

[I. L. R. 15 Bom. 299

———, Art. 49.

See ART. 120.

[I. L. R. 21 Calc. 157

———, Art. 49 and Art. 116.—*Suit to recover title-deeds left with a mortgagee after redemption —Demand and refusal—Cause of action.*] After the redemption of a mortage, the title-deeds of the mortgage premises were left with the mortgagee, who refused to return them on demand made by the mortgagor. The mortgagor now sued to recover possession of them:—*Held*, the Limitation Act, Sch. II, Art. 49, was applicable to the case and that time began to run from the date of the mortgagee's refusal. SUBBAKKA *v.* MARUPPAKKALA.

[I. L. R. 15 Mad. 157

LIMITATION ACT (XV OF 1877), Art. 49 —*concluded.*

———, Art. 57.

See ART. 115.

[I. L. R. 15 Mad. 380

———, Art. 62.

See ART. 97.

[I. L. R. 19 Calc. 123

See ART. 120.

[I. L. R. 13 All. 368

[I. L. R. 15 Mad. 382

[I. L. R. 20 Calc. 51

See ART. 131.

[I. L. R. 15 Bom. 135

———, Art. 62.—*Act XI of* 1859, *s.* 31—*Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue.*] Where *A* instituted a suit in November 1889 to recover from the Secretary of State for India in Council the surplus sale-proceeds of three *taluks* sold for arrears of Government revenue on the 3rd of October 1877 and which were in the hands of the Collector:—*Held*, that the suit was governed by Art. 62, Sch. II of the Limitation Act, and was therefore barred. SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI.

[I. L. R. 18 Calc. 234

See SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR.

[I. L. R. 20 Calc. 51

1.—Art. 64.—*Account stated—Acknowledgment of debt.*] The striking of a balance in an account the items of which are all on one side, does not amount to an "account stated" in the proper sense of the term. Hence the signature of the debtor to such balance amounts to no more than an acknowledgment of a debt; and if the debt is barred at the time of signature will not give rise to any fresh period of limitation in favour of the creditor. *Nahanibai* v. *Nathu Bhau*, I. L. R. 7 Bom. 414, followed. JAMUN *v.* NAND LAL.

[I. L. R. 15 All. 1

2.—Art 64 and s. 19. — *Account settled but not signed—Oral promise by debtor to pay balance —Commencement of limitation.*] The plaintiff and the defendant, who was his agent, examined the account between them on 13th July 1887 and a balance was found due by defendant, who orally promised to pay it in one month. The account was not signed. The plaintiff sued on 10th July 1890 to recover the amount, and it appeared that the last item in the account to the debit of

LIMITATION ACT (XV OF 1877), Art. 64 —*concluded.*

the defendant was dated 28th May 1887:—*Held*, that the suit was barred by limitation. AMUTHU *v.* MUTHAYYA.

[I. L. R. 16 Mad. 339

——, Art. 66 and Art. 116.—*Bond stipulating for recovery of loan from moveable and immoveable property.*] To a bond containing a stipulation that "if the principal and interest is not paid up at the stipulated period, then the obligee will be at liberty to recover the whole of his money, together with the interest fixed, by instituting a suit, from my moveable and immoveable property my own '*milk*,'" Art. 66 of Sch. II of the Limitation Act is applicable, such bond not creating a mortgage; but where the instrument is registered Art. 116 may be applied to a suit for failure to pay the bond debt. COLLECTOR OF ETAWAH *v.* BETI MAHARAM.

[I. L. R. 14 All. 162

——, Art. 89.—*Suit by principal against agent to recover money received and not accounted for —Termination of agency—Act IX of* 1872 (*Contract Act*), *ss.* 201, 218.] Where an agent for the sale of goods receives the price thereof, the agency does not terminate, with reference to ss. 201 and 218 of the Contract Act (IX of 1872), until he has paid the price to the principal: and a demand made by the principal for an account of the price is made "during the continuance of the agency" within the meaning of Sch. II, Art. 89 of the Limitation Act (XV of 1877): and a suit by the principal to recover the price is therefore within time if brought within three years from the date of such demand. The agency does not terminate immediately on the sale of the goods. It does not terminate at the time when the plaintiff obtained knowledge of the defendant's breach of duty. BABU RAM *v.* RAM DAYAL.

[I. L. R. 12 All. 541

——, Art. 91.

See s. 28.

[I. L. R. 14 Bom. 222

See ART. 120.

[I. L. R. 16 Mad. 138

See MALABAR LAW—JOINT FAMILY.

[I. L. R. 15 Mad. 6

1.—Art. 91.—*Suit to declare document of no effect.*] A suit for a declaration that a document "was executed for nominal purposes and was not intended to take effect" is not a suit to cancel a document within the meaning of Art 91 of Sch. II of the Limitation Act. NAGATHAL *v.* PONNUSAMI.

[I. L. R. 13 Mad. 44

2.—Art. 91 and Arts. 92, 93.—*Suit where the cancellation of a fraudulent instrument is ancillary to the main relief.*] Articles 91, 92 and 93 of Sch. II of the Limitation Act (XV of 1877) apply only to suits brought *expressly* to cancel, set aside, or declare the forgery of, an instrument; but they

LIMITATION ACT (XV OF 1877), Art. 91 —*continued.*

do not apply to suits where substantial relief is prayed, and where the cancellation or declaration is merely ancillary and not necessary to the granting of such relief. ABDUL RAHIM *v.* KIRPARAM DAJI.

[I. L. R. 16 Bom. 186

3.—Art. 91, and Arts. 92, 93, 144.—*Instrument, suit to set aside or declare the forgery of—Immoveable property, suit for possession of.*] One *D* died in 1849, leaving an *ikrarnamah* or will. His widows entered into possession of his property and the survivor died on the 23rd April 1886. The predecessors in estate of the plaintiffs brought a suit to set aside the *ikrarnamah*, which suit was dismissed in 1864, on the ground that they had no cause of action during the lifetime of the surviving widow. On the 29th June 1889 the plaintiffs, as the heirs of *D* after the death of the surviving widow, instituted a suit to recover possession of the property of *D* from the defendants, who claimed to have come into possession thereof under the *ikrarnamah* upon the death of the widow:—*Held*, that the suit was governed by the limitation of three years, for a suit to set aside an instrument, and not by the general limitation prescribed for suits to recover immoveable property, as after the widow's death the parties in possession were those claiming under the *ikrarnamah*, who could not be displaced except by setting it aside. *Raghubar Dyal Sahu* v. *Bhikya Lal Misser*, I. L. R. 12 Calc. 69, approved. *Jagadamba Chaodhrani* v. *Dakhina Mohun Roy Chaodhri*, I. L. R. 13 Calc. 308: L. R. 13 I. A. 84; and *Janki Kunwar* v. *Ajit Singh*, I. L. R. 15 Calc. 58: L. R. 14 I. A. 148, referred to. MAHABIR PERSHAD SINGH *v.* HURRIHUR PERSHAD NARAIN SINGH.

[I. L. R. 19 Calc. 629

4.—Art. 91 and Art. 144.—*Cancellation of instrument.*] A suit was filed in 1888 on behalf of a Malabar *tarwad* by two of its members to recover property improperly alienated in 1879 under a *kanom* instrument by the *karnavan* who had since been removed from office:—*Held*, that since a prayer for the cancellation of the *kanom* instrument was not an essential part of the plaintiffs' relief, the suit was not barred by the three years' rule in Limitation Act, 1877, Sch. II, Art. 91. UNNI *v.* KUNCHI AMMA.

[I. L. R. 14 Mad. 26

5.—Art. 91 and Art. 144.—*Suit by junior members of a tarwad—Suit for declaration of invalidity of kanom and for possession of property.*] The junior members of a Malabar *tarwad* brought a suit against their *karnavan* and senior *anandravan* and certain persons claiming under a *kanom* granted by the former for a declaration that the *kanom* was invalid and for possession of the land demised with mesne profits. The suit was filed nearly twelve years after the execution of the *kanom*:—*Held* (1) that the suit was maintainable by the plaintiffs; (2) that the suit was not barred by limitation. ANANTAN *v.* SANKARAN.

[I. L. R. 14 Mad. 101

LIMITATION ACT (XV OF 1877), Art. 91 —*concluded.*

6.—Art. 91 and Art. 144.—*Suit for land—Cancellation of instrument affecting the land by plaintiff.*] In a suit brought in 1889 to recover land, it appeared that the defendant had been in possession since 1885, having obtained in 1883 a conveyance of the land from one of the plaintiffs. It was found on the evidence that that conveyance had been obtained by fraud and was supported by no consideration. The other plaintiff claimed under an instrument of 1884 which recited that of 1883 and was executed by the same person. The plaint contained no prayer for the cancellation of the conveyance of 1883 :—*Held*, that the suit was not barred by limitation. SUNDARAM *v.* SITHAMMAL.

[I. L. R. 16 Mad. 311

7.—Art. 91, and Art. 144.—*Suit to recover lands of which defendant had been in possession as manager during plaintiffs' minority—Defendant setting up deed of sale—Adverse possession.*] The plaintiffs sued to recover lands which they claimed as their own, and of which they alleged the defendant to have had the management during their minority, he having been appointed a manager of all their (the plaintiffs') property by their mother and grandmother, who were dead at the date of suit. The defendant alleged that the land in question had been sold to him, and produced a deed of sale, dated 3rd October 1876, purporting to have been executed by the deceased ladies and by the plaintiffs. The plaintiffs denied all knowledge of the deed, and prayed that it might be cancelled. The defendant contended (*inter alia*) that the suit was barred by limitation, and pleaded adverse possession :—*Held*, that the suit was not barred, and that the plaintiffs were entitled to recover : (1) supposing the deed not to have been executed at all, the possession of the manager would not become adverse until he distinctly repudiated the management ; (2) if the deed were executed by the ladies only, then Art. 144 and not Art. 91 of the Limitation Act would apply ; (3) even if the minors whose names appeared in the deed, did actually execute it, nevertheless as the defendant did not get into possession under it, but only used it to defend his position, Art. 91 would not apply, *Boo Jinatboo* v. *Sha Nagar*, I. L. R. 11 Bom. 78. ALAMKHAN *v.* YASINKHAN.

[I. L. R. 17 Bom. 755

———, Arts. 92, 93.

See ART. 91.

[I. L. R. 19 Calc. 629

[I. L. R. 16 Bom. 186

———, Art. 95.

See S. 28.

[I. L. R. 14 Bom. 222

See DEBTOR AND CREDITOR.

[I. L. R. 16 Bom. 1

LIMITATION ACT (XV OF 1877), Art. 95 —*concluded.*

———, Arts. 95, 96.—*Partition to detriment of minor—Suit by minor on attaining majority to recover his full share—Mistake in making partition.*] Certain members of a joint Hindu family, partitioned the family property among them in such a way as to give one member of the family, who at the time of the partition was a minor, less than the share to which he was entitled. The minor was represented in the partition by his uncle, though the uncle was not the natural guardian of the minor, nor in any other way entitled to deal with the minor's property. The minor on attaining majority brought a suit for recovery of the full share to which he was entitled :—*Held*, that this was not a suit for relief on the ground of fraud or mistake, inasmuch as the partition could not under the circumstances affect in any way the rights of the minor. The suit was therefore not subject to the limitation of three years prescribed by Arts. 95 and 96 of the Sch. II of Act XV of 1877. LAL BAHADUR SINGH *v.* SISPAL SINGH.

[I. L. R. 14 All. 498

———, Art. 97, and Art. 62.—*Suit to recover purchase-money where purchaser was unable to obtain possession—Failure of consideration-money paid—Money had and received.*] A sale, which a member of a joint family (Mithila) had attempted to make, went off upon the objection made by other co-sharers, but not before the purchase-money had been paid. It might have been that the agreement for sale was not void from the beginning, but was only void upon objection being made ; and if it was only voidable, the consideration did not fail at once at the time of the receipt of the purchase-money, so as to render it money had and received to the use of the payer within the meaning of Art. 62 of Sch. II of Act XV of 1877. But it failed, at all events, when the purchaser being opposed found himself unable to obtain possession. He would have had a right to sue at that time to recover his purchase-money upon a failure of consideration. And, therefore, the case appeared to fall within Art. 97. It must fall either within that Article or within Art. 62. HANUMAN KAMAT *v.* HANUMAN MANDUR.

[I. L. R. 19 Calc. 123

[L. R. 18 I. A. 158

———, Art. 99.

See ART. 132.

[I. L. R. 12 All. 110

———, Art. 99, and Art. 132.—*Payment of entire rent by a co-tenant—Suit for contribution.*] One of two persons, having a joint holding from a *mittadar*, paid the whole of the *mittadar's* dues for one year, and more than three years after the date of payment he sued the other for contribution :—*Held*, the payment did not create a charge on the land, and Art. 132 of the Limitation Act was therefore not applicable, and the suit was consequently barred by limitation under Art. 99. THANIKACHELLA *v.* SHUDACHELLA.

[I. L. R. 15 Mad. 258

LIMITATION ACT (XV OF 1877)—*contd.*

———, Art. 107.—*Joint Hindu family—Debts of manager—Contribution, limitation in respect of, suit for.*] Where money is borrowed by the manager of a joint Hindu family on his personal security for purposes of necessity, his right to contribution arises when he expends the money, and limitation runs against his claim from that date, and not from the date on which he repays the loan and releases his security. *Sunkur Pershad* v. *Goury Pershad*, I. L. R. 5 Calc. 321; *Ram Krishna Roy* v. *Madan Gopal Roy*, 6 B. L. R. Ap. 103; 12 W. R. 194, followed. AGHORE NATH MUKHOPADHYA *v.* GRISH CHUNDER MUKHOPADHYA.

[I. L. R. 20 Calc. 18

———, Art 110.

See ART. 120.

[I. L. R. 16 Mad. 305

———, Art. 115, and Art. 57.—*Debt contracted to be payable at a future date.*] In a suit against the legal representative of a deceased debtor to recover the amount of the debt it appeared that the debt was contracted on 30th September 1885, and was to be repayable a month after that date. In a suit brought on 24th October 1888:—*Held, per* MUTTUSAMI AYYAR and PARKER, JJ., that the period of limitation should be computed from the date when the debt was due, and the suit was not barred. Such a suit is governed by Art. 115, and not by Art. 57 of the Limitation Act. *Rameshwar Mandal* v. *Ram Chand Roy*, I. L. R. 10 Calc. 1033, followed. RAMASAMI v. MUTTUSAMI.

[I. L. R. 15 Mad. 380

———, Art 116.

See ART. 66.

[I. L. R. 14 All. 162

1.—Art. 116.—*Registered instalment bond, suit on—Contract in writing registered.*] Article 116 of the Limitation Act is applicable to a suit on a registered instalment bond, notwithstanding the express provisions of Art. 74. That Art. (116) is intended to apply to all contracts in writing registered, whether there is or is not an express provision in the Limitation Act for similar contracts not registered. DIN DOYAL SINGH *v.* GOPAL SARUN NARAIN SINGH.

[I. L. R. 18 Calc. 506

2.—Art. 116.—*Interest on deed of conditional sale—Interest after date fixed for payment of principal and interest—Absence of agreement to pay such interest—Compensation for breach of contract.*] Where there is no stipulation in a deed of conditional sale to pay interest after the day fixed for the repayment of principal and interest a claim for interest after due date is a claim for compensation for breach of contract, and a suit for the recovery of such compensation must be brought within six years from the date of the breach. *Juggomohun Ghose* v. *Manick Chand*, 7 Moo. I. A. 279, referred to; *Mansab Ali* v. *Gulab Chand*, I. L. R. 10 All. 85; and *Bhagwant Singh* v. *Daryao Singh*, I. L. R. 11 All. 416, approved of. *Bhugwan Lal* v. *Mohip Narain Singh*, unreported, and *Golam Abas* v. *Mohamed Jaffer*, I. L. R. 19 Calc. 23 note, followed. GUDRI KOER *v.* BHUBANESWARI COOMAR SINGH.

[I. L. R. 19 Calc. 19

LIMITATION ACT (XV OF 1877). Art. 116 *concluded.*

GOLAM ABAS *v.* MAHOMED JAFFER.

[I. L. R. 19 Calc. 23 note

3.—Art. 116.—*Building lease—Coal depôt, lease for, not agricultural or horticultural lease—Bengal Tenancy Act (VIII of* 1885), *Sch. III, Art.* 2.] A registered lease granted for building purposes and for establishing a coal depôt does not come within the purview of the Bengal Tenancy Act, not being a lease for agricultural or horticultural purposes. The limitation applicable to a suit for the rent reserved in such a lease is that prescribed by Art. 116 of the Limitation Act, and not that provided by Sch. III, Art. 2 of the Bengal Tenancy Act. RANIGANJ COAL ASSOCIATION *v.* JUDOONATH GHOSE.

[I. L. R. 19 Calc. 489

4.—Art. 116.—*Suit between partners—Registered partnership deed.*] The plaintiffs and the defendants entered into a partnership agreement, which was registered, whereby it was, among other things, provided expressly that each partner should bear the loss, if any, incurred in the business in proportion to his share. The plaintiffs, alleging that loss had been incurred and borne by them, sued to recover the defendants' share of the loss:—*Held*, that since the partnership agreement was registered, the suit was governed by Limitation Act, Sch. II, Art. 116. RANGA REDDI *v.* CHINNA REDDI.

[I. L. R. 14 Mad. 465

5.—Art. 116, and Art. 113.—*Suit by mortgagor to recover money due on a registered mortgage-deed.*] A suit by a mortgagor to recover money due on a registered mortgage-deed, together with damages for non-payment, is not a suit to which the period of limitation prescribed by the Limitation Act (XV of 1877), Sch. II, Art. 113 (for specific performance of a contract) is applicable. The period of limitation applicable to such a suit is that prescribed by Art. 116 of Sch. II, of the said Act (for compensation for the breach of a contract in writing registered); and the time from which limitation will run against the mortgagor is, in the absence of any specific provision to the contrary, the date of the execution of the mortgage-deed. *Gauri Shankar* v. *Surju*, I. L. R. 3 All. 276; *Husain Ali Khan* v. *Hafiz Ali Khan*, I. L. R. 3 All. 600; *Nobocoomar Mookhopadhaya* v. *Siru Mullick*, I. L. R. 6 Calc. 94; *Vythilinga Pillai* v. *Thetchanamurti Pillai*, I. L. R. 3 Mad. 76; and *Ganesh Krishn* v. *Madharrav Ravji*, I. L. R. 6 Bom. 75, referred to. NAUBAT SINGH *v.* INDAR SINGH.

[I. L. R. 13 All. 200

LIMITATION ACT (XV OF 1877)—*contd.*

———, Art. 120.

See ART. 132.

[I. L. R. 12 All. 110

See BOMBAY REVENUE JURISDICTION ACT, S. 4.

[I. L. R. 16 Bom. 455

See MALABAR LAW—JOINT FAMILY.

[I. L. R. 15 Mad. 6

1.—Art. 120.—*Suit to oust a shebait from office the appointment to which is made by nomination.*] A suit to oust a *shebait* from his office, the appointment to which has been made by nomination, is one for which no period of limitation is specially provided, and is therefore groverned by Art. 120 of Sch. II of the Limitation Act. JAGAN NATH DAS *v.* BIRBHADRA DAS.

[I. L. R. 19 Calc. 776

2.—Art. 120.—*Suit for money paid under a decree on reversal of the decree.*] In a suit of 1867 the present defendant obtained a decree for possession of a certain village and mesne profits for one year. Pending an appeal against that decree execution was stayed on the present plaintiff depositing a note for Rs. 15,000 as security. The decree was affirmed on appeal, and the present defendant had the note sold in execution and drew out of the proceeds a sum for mesne profits for subsequent years; but an appeal was preferred in the execution-proceedings to the High Court which set aside the execution so far as concerned the mesne profits for the years subsequent to that to which the original decree related. The present plaintiff thereupon attached and sold the village to recover the balance: before that amount was paid to the present plaintiff the present defendant brought a suit against him in the District Court and there obtained a decree for mesne profits for the subsequent years and in the execution drew the amount of the decree out of Court. In second appeal, however, the High Court, on 26th September 1881, reversed the decree of the District Court, whereupon the present plaintiff applied for restitution under Civil Procedure Code, s. 583, which application was ultimately disallowed. The present suit was brought to recover the amount to which that application related:—*Held*, that the Limitation Act, Sch. II, Art. 120, was applicable to the suit, which having been filed on 9th August 1887 was accordingly not barred by limitation. NARAYANA *v.* NARAYANA.

[I. L. R. 13 Mad. 437

3.—Art. 120.—*Suit for perpetual injunction.*] In a suit for a perpetual injunction to restrain the defendant from preventing the plaintiff from entering a certain house it was alleged that the defendant had been in exclusive possession for more than six years before suit:—*Held*, that Limitation Act, Sch. II, Art. 120, applied to the suit which was therefore barred by limitation. KANAKASABAI *v.* MUTTU.

[I. L. R. 13 Mad. 445

LIMITATION ACT (XV OF 1877), Art. 120—*continued.*

4.—Art. 120.—*Suit for mutation of names in register.*] A suit by a purchaser against his vendor to compel mutation of names in the register is not barred by limitation unless the Collector has refused without qualification to effect such mutation, negativing the plaintiff's right to the land in question. A merely conditional refusal does not raise a cause of action. VIRASAMI *v.* RAMA DOSS.

[I. L. R. 15 Mad. 350

5.—Art. 120.—*Suit for the apportionment of assessment on land.*] In a suit by the holder of one share against the holders of other shares in *inam* land, included in a single *pottah* and assessed in an entire sum, for apportionment of the assessment, it appeared that the plaintiff had asked for the apportionment to be made more than six years before suit:—*Held*, that the suit was not barred by limitation, s. 120 was not applicable to suit a suit. ANANDA RAZU *v.* VIYYANNA.

[I. L. R. 15 Mad. 492

6.—Art. 120—*Suit by a reversioner for a declaration of his title to property sold in execution of a decree against a Hindu widow—Cause of action.*] *D* died, leaving him surviving a widow and a daughter who was plaintiff's mother. Defendant No. 2 obtained a decree against the widow, and in execution put up *D's* property to sale. Defendants 3, 4 and 5 purchased the property and took possession in 1869. In 1883 the plaintiffs sued as *D's* reversionary heirs for a declaration that they were entitled to the property in dispute on the widow's death, alleging that the decree, in execution of which the property was sold, was a collusive and fraudulent decree, and that they were not bound by the sale in execution. They further alleged that the cause of action arose in 1879, when their mother died:—*Held*, that the suit was barred by limitation. The cause of action giving any reversioner the right to sue for a declaration was that given to the plaintiffs' mother in 1869, both by the sale and the dispossession, and it was not revived in favour of the plaintiffs on her death in 1879. All right to sue for a declaration was, therefore, barred in 1875 under Art. 120 of Sch. II of the Limitation Act (XV of 1877). CHHAGANRAM ASTIKRAM *v.* BAI MOTIGAVRI.

[I. L. R. 14 Bom. 512

7.—Art 120.—*Suit for a declaration of heirship—Accrual of the cause of action—Denial of title.*] *A* sued for a declaration that she was the daughter of *B*, who died in 1870. On *B's* death his *kulkarni vatan* was attached, and *C* was appointed to officiate on behalf of Government. In 1892 *A* applied for a certificate of heirship to *B*, with a view to get her name entered as a *vatandar* in place of her deceased father's. *C* opposed her application, denying that she was the daughter and heiress of *B*. Her application being rejected, *A* filed the present suit against *C*, in 1877, to obtain a declaration that she was the daughter and heiress of *B*. The Court of First Instance granted the declaration sought. The Appellate

LIMITATION ACT (XV OF 1877), Art. 120 —*continued.*

Court rejected the claim as barred under Art. 120 of the Limitation Act (XV of 1877), holding that time should be computed from the date of *B's* death:—*Held*, that *A's* cause of action accrued, not on *B's* death, but on the denial of her *status* by *C* in the certificate proceedings. The suit, having been brought within six years from that time, was not barred under Art. 120 of the Limitation Act. TUKABAI *v.* VINAYAK KRISHNA KULKARNI.

[I. L. R. 15 Bom 422

8.—Art. 120.—*Bengal Regulation No. XVII of* 1806, *ss*, 7, 8—*Mortgage by conditional sale—Foreclosure — Pre-emption, suit for.*] Where a mortgage by conditional sale had been duly foreclosed in accordance with the procedure laid down in ss. 7 and 8 of Regulation XVII of 1806, and at the expiration of the year of grace a portion of the mortgage-money remained unpaid:—*Held*, in a suit for pre-emption of the mortgaged property that the title of the conditional vendee became absolute on the expiration of the year of grace and that the plaintiff's right of pre-emption accrued and limitation began to run against him from the expiration of such year of grace. *Forbes* v. *Ameeroonissa Begum*, 10 Moo. I. A. 340, distinguished; *Raisuddin Chowdhry* v. *Khodu Newaz Chowdhry*, 12 C. L. R., 479; *Jaikaran Rai* v. *Ganga Dhari Rai*, I. L. R. 3 All. 175; *Ameer Ali* v. *Bhabo Soondaree Debia*, 6 W. R. 116; *Ajoodhya Pooree* v. *Sohun Lal*, 7 W. R. 428; *Jeorakhun Singh* v. *Hookum Singh*, 3 Agra 358; *Buddree Doss* v. *Durga Parshad*, 2 N. W. 284; *Tara Kunwar* v. *Mangri Meeah*, 7 B. L. R. Ap 114; *Hazari Ram* v. *Shankar Dial*, I. L. R. 3 All. 770; *Tawakkul Rai* v. *Lachman Rai*, I. L. R. 6 All. 344; and *Ajaib Nath* v. *Mathura Prasad*, I. L. R. 11 All. 164, referred to. *Prag Chaubey* v. *Bhajan Chaudhri*, I. L. R. 4 All. 291; *Rasik Lal* v. *Gajraj Singh*, I. L. R. 4 All, 414; and *Udit Singh* v. *Padarath Singh*, I. L R. 8 All. 54, overruled. ALI ABBAS *v.* KALKA PRASAD.

[I. L. R. 14 All. 405

9.—Art. 120—*Suit by a decree-holder against the sons of a deceased judgment-debtor whose property had passed to them.*] A decree was passed against a Hindu for money dishonestly retained by him from the plaintiff's family to which he was accountable in respect of it. The judgment-debtor having died, the decree-holder sought to attach in execution property of the family which had passed into the hands of his sons by survivorship. The sons objected that such property was not liable to attachment, and the decree-holder was referred to a regular suit. He now brought a suit against the sons:—*Held*, that the suit was governed by Art. 120 of the Limitation Act, and that time began to run for the purposes of limitation from the death of the father. NATASAYYAN *v.* PONNUSAMMI.

[I. L. R. 16 Mad. 99

10.—Art. 120.—*Suit by the purchaser in execution-sale to recover the purchase-money.*] The plaintiff purchased land sold in execution of a

LIMITATION ACT (XV OF 1877), Art. 120 —*continued.*

decree in favour of the defendant, but was subsequently evicted by the son of the judgment-debtor. He now sued in 1889 to recover the purchase-money paid by him, on the ground that the judgment-debtor possessed no saleable interest in the property in question. It appeared that in 1888 the son of the judgment-debtor had obtained a decree against the plaintiff and others declaring that she (the judgment-debtor) had no saleable interest in the property:—*Held*, that Limitation Act, Sch. II, Art. 120, contained the rule of limitation applicable to the suit, which was accordingly not time-barred, since the cause of action did not arise until 1888. NILAKANTA *v.* IMAMSAHIB.

[I. L. R. 16 Mad. 361

11.—Art. 120.—*Right of suit — Continuing right—Suit for construction of will—Suit for declaratory decree.*] In a suit by reversioners after the death of the widow of a testator for the construction of his will and codicil, and for a declaration of the plaintiffs' rights, *held*, that the suit was not barred by lapse of time. A suit for declaratory relief of such a nature cannot be held to be barred so long as the right to the property in respect of which the declaration is sought is a subsisting right, and the plaintiffs had a subsisting right as reversioners, so long as the widow was alive. The right to bring such a suit is a continuing right therefore, and may be claimed within the statutory period from the time when the plaintiffs become entitled to the consequential relief. The present suit having been brought within six years from the death of the widow, was within time. CHUKKUN LAL ROY *v.* LOLIT MOHAN ROY.

[I. L. R. 20 Calc. 906

12.—Art. 120, and s. 10, and Art. 62.—*Act XI of* 1859, *s.* 31—*Suit to recover surplus sale-proceeds of a sale for arrears of Government revenue.*] In a suit brought for the residue of the sale-proceeds of an estate sold under the provisions of Act XI of 1859 against the Secretary of State for India in Council, the defence was raised that the suit was barred under Art. 62 of Sch. II of the Limitation Act (XV of 1877):—*Held* by the Full Bench that Art. 62, Sch. II of the Limitation Act, did not apply, and that the case was governed by Art. 120. *Held* by PIGOT, J., that the sale-proceeds became vested in the defendant in trust for a specific purpose within the meaning of s. 10 of the Limitation Act, and that therefore the Limitation Act had no operation in the case; but that, assuming that the Limitation Act was applicable, the case was governed by Art. 120. *Secretary of State for India in Council* v. *Fazal Ali*, I. L. L. 18 Calc. 234, overruled. SECRETARY OF STATE FOR INDIA *v.* GURU PROSHAD DHUR: ABDUL BARI *v.* SECRETARY OF STATE FOR INDIA. SECRETARY OF STATE FOR INDIA *v.* RAMBULLUB DAS CHOWDHRY.

[I. L. R. 20 Calc. 51

See SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI.

[I. L. R. 18 Calc. 234

LIMITATION ACT (XV OF 1877), Art. 120 —*continued.*

13.—Art. 120, and s. 10, and Arts. 124 and 144.—*Suit by a uralan against an agent of a devasom—Repudiation of agency.*] In 1873 a predecessor of the plaintiff claiming to be the *uralan* of a *devasom* brought a suit in a District Munsif's Court against the present defendant, whom he alleged to be an agent of the *devasom*, and the defendant disputed the *uraima* right of the plaintiff and denied that he had been appointed agent as alleged. Issues as to both of these matters were decided in favour of the defendant and the suit was dismissed in 1874. A suit was now brought in 1890 for a declaration of the plaintiff's title as *uralan* and to recover from the defendant as such agent, property of a value which exceeded the pecuniary limits of the jurisdiction of a District Munsif, the suit being therefore instituted in the Subordinate Judge's Court:—*Held*, that the suit was barred by limitation. SANKARAN *v.* KRISHNA.

[I. L. R. 16 Mad. 456

14.—Art. 120, and s. 23 and Arts. 34, 35—*Suit for restitution of conjugal rights.*] It is not necessary, as a condition precedent to a suit for the restitution of conjugal rights, or for the recovery of a wife who has deserted her husband, the parties being Hindus, that there should be any demand by the plaintiff and refusal by the defendant. The provisions of Arts. 34 and 35 of Sch. II of the Limitation Act cannot be taken as applicable to suits of this description. To hold that they did apply would be to introduce serious innovations into the personal law of the Hindus (and of the Mahomedans) which could not have been contemplated by a statute of the nature and scope of the Limitation Act. The limitation applicable to suits of the present nature is that of Art. 120 of Sch. II read with s. 23 of the Limitation Act. BINDA *v.* KAUNSILIA.

[I. L. R. 13 All. 126

15.—Art. 120, and Arts. 49 and 123.—*Suit by Mahomedan widow to have declared her right by local custom to life interest in estate of her husband—Suit for distributive share of property—Suit for moveable property wrongly taken.*] To a suit by a Mahomedan widow against the brother of her deceased husband to have declared her right to possess for life the estate of the latter in accordance with a proved local custom, Art. 120, Sch. II, Limitation Act (XV of 1877), was held applicable, it not being a suit for a distributive share of property within the meaning of Art. 123 of the same; nor a suit for specific moveables wrongly taken within the meaning of Art. 49, and no other Article of Sch. II being applicable. MAHOMED RIASAT ALI *v.* HASIN BANU.

[I. L. R. 21 Calc. 157
[L. R. 20 I. A. 155

16.—Art. 120, and Art. 62.—*Suit by purchaser of decree to recover money of deceased judgment-debtor in the hands of his agent.*] One *A P*, having certain moneys lying at his credit in Calcutta, empowered *A L* to receive the same and hold them on his behalf. *A P* died at Moradabad, and subsequently to his death the said moneys, which remained in the hands of *A L*, were attached by one of the creditors of *A P* in execution of a decree. The decree-holder sold his rights under the decree in respect of the moneys in the hands of *A L* to the plaintiffs, who sued to obtain the same from *A L*:—*Held*, that the period of limitation applicable to such a suit was that prescribed by Art. 120 of Sch. II of the Limitation Act (XV of 1877). *Gurudas Pyne* v. *Ram Narain Sahu*, I. L. R. 10 Calc. 812, referred to. CHAND MAL *v.* ANGAN LAL.

[I. L. R. 13 All. 368

17.—Art. 120, and Art. 62.—*Money received for plaintiff's use—Suit for which no period prescribed—Transfer of Property Act (IV of 1882), s. 135.*] *A* obtained a money-decree against *B* and attached certain land in execution. *C* intervened in execution successfully. *A* then brought a suit to establish that the land was liable to be sold in execution, and obtained a decree. Meanwhile the land was taken up by Government under the Land Acquisition Act, and the compensation-money was paid to *C*. *A* attached this sum as a debt due to *B* and sold it in execution, and it was purchased by the plaintiff. The plaintiff now sued *C* to recover the amount of the debt:—*Held*, that the suit was governed by Limitation Act, Sch. II, Art. 120, and not by Art. 62, and that the plaintiff was entitled to recover without regard to the terms of Transfer of Property Act, s. 135. KRISHNAN *v.* PERACHAN.

[I. L. R. 15 Mad. 382

18.—Art. 120, and Art. 91.—*Suit for declaration of right by setting aside kanom mortgage.*] The reversionary heirs to a *stanom* in Malabar sued in 1889 for a declaration that a *kanom* executed in 1881 by the first defendant, the present holder of the *stanom*, in favour of the second defendant, was not binding on them or on the *stanom*:—*Held*, that the suit was barred under Limitation Act, 1877, Sch. II, Art. 120. PURAKEN *v.* PARVATHI.

[I. L. R. 16 Mad. 138

19.—Art. 120, and Art. 110.—*Suit to recover customary dues payable on account of a chattram—Suit for rent.*] In a suit by the District Board in charge of a *chattram* to recover a certain sum as the arrears of various *merais*, being customary dues payable by the defendants for the benefit of the *chattram* on account of lands held by them, the defendants among other defences relied upon a plea of limitation:—*Held*, that the suit was governed by Limitation Act, Sch. II, Art. 120, and not by Art. 110 as a suit for rent. VENKATAVARAGA *v.* DISTRICT BOARD OF TANJORE.

[I. L. R. 16 Mad. 305

LIMITATION ACT (XV OF 1877), Art. 120 —*concluded.*

20.—Art. 120, and s. 131.—*Periodically recurring right—Denial of right.*] In a suit brought in 1889 by a landholder against the Secretary of State for a declaration of his right against Government to have certain remissions made in the sum to which he was annually assessed, no consequential relief was sought, and it appeared that the plaintiff's claim for the remission had been made in 1878 and had been refused by Government:—*Held*, that Limitation Act, 1877, Sch. II, Art. 120, and not Art. 131, applied to the case, and the suit was barred by limitation. BALAKRISHNA *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 16 Mad. 294

———, Art. 123.

See ART. 120.

[I. L. R. 21 Calc. 157

See ART. 144.

[I. L. R. 16 Mad. 61

1.—Art. 123.—*Suit by a Mapilla widow for her share in her husband's property.*] The widow of a Mapilla, who had died intestate more than fourteen years before suit, sued to recover a one-sixteenth share of the property left by him and his brother:—*Held*, that although the parties were Mapillas the suit was governed by Art. 123 of the Limitation Act and was accordingly barred. KASMI *v.* AYISHAMMA.

[I. L. R. 15 Mad. 60

———, Art. 123.—*Suit to recover vatan allowance.*] In 1864, *N B*, the owner of a share in a *deshpande vatan*, died childless and intestate. A certificate of administration under Regulation VII of 1827 was granted to one *G*, a distant relation, who received *N B's* share in the *vatan* up to and including the year 1871. In the meantime, *viz.*, on the 19th November 1870, two nearer relations, *D* and *B*, succeeded in getting *G's* certificate cancelled, and obtained a certificate to themselves jointly. In 1876 the Collector recognized *D* alone as the heir of *N B* and paid *D's* son, *S*, the share of the deceased *N B* with arrears from 1872. After *S's* death his son *N* (defendant No. 1), received it down to the year 1884. In 1883 *K*, (father of plaintiff No. 1), got the certificate of 1870 cancelled and obtained a certificate to himself jointly with defendant No. 1. *K* died, and the plaintiffs (his son and nephew), brought this suit claiming to be co-sharers in the one anna and four pies' share of *N B*. The defendants contended (*inter alia*) that the suit was barred. The Court of First Instance awarded the plaintiffs' claim for the three years previous to the suit and rejected the rest of the claim. The defendants appealed to the District Judge, who held that the plaintiffs' claim was totally barred, under Art. 123 of the Limitation Act (XV of 1877). On appeal by the plaintiffs to the High Court:—*Held*, reversing the decree of the lower Appellate Court, that Art. 123 did not apply, and that the suit was not barred. There was no cause of action until *N B* and his successors in title *D* and *S* were recognized

LIMITATION ACT (XV OF 1877), Art. 123 —*concluded.*

by the Collector and paid the arrears of the *hak*. *G* was quite independent of them, and this recognition did not take place until 1876—less than twelve years before the institution of the plaintiffs' suit. KESHAV JAGANNATH *v.* NARAYAN SAKHARAM.

[I. L. R. 14 Bom. 236

———, Art. 124.

See ART. 120.

[I. L. R. 16 Mad. 456

1.—Art. 127.—*Suit by person claiming a share in joint family property.*] The word "person" mentioned in Art. 127 of Sch. II of the Limitation Act means some person claiming a right to share in joint family property upon the ground that he is a member of the family to which the property belongs. *Radhanath Doss* v. *Gisborne*, 14 Moore's I. A. 1: 15 W. R. P. C. 24; *Ram. Lakhi* v. *Ambica Charan Sen*, I. L. R, 11 Calc. 680; and *Horendra Chundra Gupta Roy* v *Aunordi Mundul*, I. L. R. 14 Calc. 544, relied on. KARTICK CHUNDER GHUTTUCK *v.* SARODA SUNDURI DEBI.

[I. L. R. 18 Calc. 642

2.—Art. 127.—*Aliyasantana law.—Exclusion from joint family property.*] In a suit in which the plaintiffs sought declarations that they were members of an undivided Aliyasantana family with the defendants, that certain property belonged to the family, and that plaintiff No. 1, the senior member of the family, was entitled to have the lands registered in his name, the defendants denied the allegations in the plaint, and pleaded that the suit for declarations only was not maintainable, and that it was barred by limitation. It was found that the plaintiffs had separated themselves from the defendants more than twelve years before suit:—*Held*, that Art. 127 applied to the case, and that the plaintiffs, having separated themselves from the defendants, had for more than twelve years been to their own knowledge excluded from the joint family property, and that their suit to enforce a right to share therein was barred. *Mahalinga* v. *Mariyamma*, I. L. R. 12 Mad. 462, distinguished. MUTTAKKE *v.* THIMMAPPA.

[I. L. R. 15 Mad. 186

3.—Art. 127.—*Suit by a Mahomedan for partition of joint property.*] Article 127 of the Limitation Act (XV of 1877) applies to a suit by a Mahomedan for partition of joint-family property BAVASHA *v.* MASUMSHA.

[I. L. R. 14 Bom. 70

4.—Art. 127.—*Joint family property—Suit by Mahomedan heir for his share in an undistributed estate.*] The words "joint family property" in Limitation Act, 1877, Sch. II, Art. 127, are intended to refer to joint family property in the Hindu sense of the term. A Mahomedan sued, as heir in 1888, to recover his share in the property of his grandfather, which had been enjoyed jointly by his descendants from his death, which

LIMITATION ACT (XV OF 1877), Art. 127 —*concluded.*

occurred in 1840, up to a recent date. It did not appear that the family was governed by any special custom:—*Held*, that the suit was not governed by Art. 127 of the Limitation Act, and was barred by limitation. PATCHA *v.* MOHIDIN.

[I. L. R. 15 Mad. 57

KASMI *v.* AYISHAMMA.

[I. L. R. 15 Mad. 60

5.—Art. 127.—*Mahomedan family—Redemption of mortgage by some co-sharers—Possession by such co-sharers after redemption—Subsequent claim to property by other co-sharers.*] The possession by a Mahomedan co-sharer of property which he has redeemed from a mortgage does not become adverse to the other co-sharers until some exclusive title is set up. *Ramchandra Yashvant* v. *Sadashiv Abaji*, I. L. R. 11 Bom. 422, and *Bhaudin* v. *Ismail*, I. L. R. 11 Bom. 425, referred to. FAKI ABAS *v.* FAKI NURUDIN.

[I. L. R. 16 Bom. 191

6.—Art. 127.—*Suit by Mahomedans for possession by right of inheritance of shares in the property of their deceased ancestor.*] The words "joint family property" in Art. 127 of Sch. II of the Limitation Act (XV of 1877) mean "the property of a joint family." Hence the period of limitation prescribed by that Article of the Limitation Act will not apply to a case in which members of a Mahomedan family are suing for possession by right of inheritance of shares in immoveable property alleged to have been that of the deceased common ancestor of themselves and some of the defendants, and of which they allege they had been dispossessed by the defendants. *Bavasha* v. *Masumsha*, I. L. R. 14 Bom. 70, dissented from. AMME RAHAM *v.* ZIA AHMAD.

[I. L. R. 13 All. 282

———, Art. 131.

See ART. 120.

[I. L. R. 16 Mad. 294

1.—Art. 131, and Art. 62.—*Suit to establish title to a share in an annual allowance and also to recover arrears.*] A suit by a co-sharer to establish his title to a share in an annual allowance received by the defendant from Government is one falling under Art. 131, and not 144, of the II Sch. of the Limitation Act (XV of 1877). The plaintiffs sued to establish their title to a half share in the *deshmukhi* allowance annually received by the defendant from the Mamlatdar's treasury, and also to recover six years' arrears. Both the lower Courts found that the plaintiffs had not received their share of the allowance at any time within twelve years before suit, and, therefore, rejected the plaintiffs' claim as time-barred:—*Held*, in second appeal, that the plaintiffs' claim for a declaration of their title to the allowance was governed by Art. 131 of the Limitation Act, under which Article it would not be barred by the mere fact of the plaintiffs' exclusion from enjoyment of their share for twelve years

LIMITATION ACT (XV OF 1877), Art. 131 —*concluded.*

before suit, unless it were shown that such exclusion was the result of refusal made upon a demand. The period of twelve years provided by that Article would run from the time when the plaintiffs were first refused the enjoyment of the right. *Held*, further, that the claim for arrears of the allowance fell under Art. 62 of the Limitation Act. *Held*, also, that if the claim for a declaration of title to the allowance were barred, the claim for arrears would also be barred. RAOJI *v.* BALA.

[I. L. R. 15 Bom. 135

2.—Art. 131, and Art. 132.—*Kattubadi—Recurring right — Madras Rent Recovery Act (Madras Act VIII of* 1865), *s.* 7.] In a suit by a zemindar against the grantee of an *inam* to recover arrears of *kattubadi*, it appeared that no payment had been made in respect of *kattubadi* for a period of twelve years before suit. The suit was dismissed in the Court of First Appeal on the findings among others (1) that the plaintiff had not proved his right to the *kattubadi*, and (2) that his right to it, if any, was barred by limitation. On second appeal by the plaintiff:—*Held*, that the above findings should be accepted and the second appeal dismissed. *Alubi* v. *Kunhi Bi*, I. L. R. 10 Mad. 115, distinguished. RAMACHANDRA *v.* JAGANMOHANA.

[I. L. R. 15 Mad. 161

———, Art. 132.

See ART. 131.

[I. L. R. 15 Mad. 161

See ART. 148.

[I. L. R. 14 Bom. 113

1.—Art. 132.—*Debt not charged on immoveable property—Hindu widow—Reversioner.*] A widow purported to charge land which she held for her widow's estate with payment of a debt; and afterwards surrendered her estate to the next heir, or reversioner, on condition that he should pay all her debts. In a suit brought by the creditor after the death of the widow, against the reversioner, more than six years from the time when the debt had become payable:—*Held*, that unless the debt had been effectively charged on immoveable property within Art. 132, Sch. II of the Limitation Act, 1877, the suit would be barred: and the charge alleged to have been made on immoveables was found not to have been, in fact, a binding one. KAMESWAR PERSHAD *v.* RAJKUMARI RUTTAN KOER.

[I. L. R. 20 Calc. 79

[L. R. 19 I. A. 234

2.—Art. 132, and Arts. 99 and 120.—*Contribution suit for—Sale of mortgaged property in execution of decree—Confirmation of sale.*] Where the owner of two villages sold under a decree obtained upon a mortgage, claims contribution proportionately against the owners of the other properties included in the mortgage, and does not claim from them all collectively one lump sum as contribution, he may join all the contributors in one suit, and is not bound to bring

LIMITATION ACT (XV OF 1877), Art. 132 —*concluded.*

separate suits for contribution against the separate owners. The owners of the other villages included in the mortgage are liable to contribution; and the owner of the property sold is entitled to a charge on those other villages in respect of the several amounts to be contributed; and the suit for contribution is governed by the limitation provided by Art. 132 and not by that provided by Art. 99 or Art. 120 of Sch. II of the Limitation Act (XV of 1877), and must be instituted with twelve years from the date of confirmation of sale. *Ram Dutt Singh* v. *Horakh Narain Singh*, I. L. R. 6 Calc. 549, and *Pancham Singh* v. *Ali Ahmad*, I. L. R. 4 All. 58, referred to. IBN HUSAIN *v.* RAMDAI.

[I. L. R. 12 All. 110

3.—Art. 132, and Arts. 135 and 147—*Suit on a mortgage-bond—Conditional sale—Foreclosure—Bengal Regulation (XVII of 1806), ss. 7, 8—Transfer of Property Act (IV of 1882), s. 67, cl. (a).*] In a suit for possession of land on the allegations that it was mortgaged by the defendant's father in July 1849 to the plaintiffs' predecessors, by way of conditional sale, by a deed which fixed no time for payment, and made no provision as to the mortgagee taking possession; that the mortgagor made various payments down to 1875; and that subsequently foreclosure proceedings were instituted under Regulation XVII of 1806, and the mortgage foreclosed in 1877, the lower Appellate Court found that the deed was duly executed, but that the foreclosure proceedings were irregular and invalid:—*Held*, that inasmuch as the deed fixed no time of payment, and the suit was brought more than twelve years after the date of the mortgage-deed, and also more than twelve years after the date of the alleged last payment to the mortgagee, which was in 1875, the suit was barred by Art. 132, Sch. II of the Limitation Act Having regard to the provisions of s. 67, cl. (*a*), of the Transfer of Property Act, the mortgage being by conditional sale, the mortgagee was not entitled to the remedy by sale, and therefore Art. 147 did not apply to the case. *Girwar Singh* v. *Thakur Narain Singh*, I. L. R. 14 Calc. 730, referred to. *Held*, also, that inasmuch as the mortgagee did not become entitled to possession after foreclosure proceedings under Regulation XVII of 1806, the proceedings having been found to have been invalid, and as the mortgage-deed did not contain any provision as to the mortgagee taking possession, Art. 135 was not applicable. NILCOMAL PRAMANICK *v.* KAMINI KOOMAR BASU.

[I. L. R. 20 Calc. 269

———, Art. 134.—*Mortgage — Sub-mortgage by mortgagee—Suit for redemption by original mortgagor against mortgagee and sub-mortgagees—Adverse possession by sub-mortgagees — "Purchaser for value"—"Valuable consideration"—Section 5 of the Limitation Act (XIV of 1859)—Art. 134, Sch. II of the Limitation Act (IX of 1871).*] *Held*, that the expression "purchaser for valuable consideration" in Art. 134 of the Limitation Acts (IX of 1871 and XV of 1877), includes a mortgagee as well as a purchaser properly so called. *Semble:*—The words "*bonâ fide*," which appeared in Art. 134 Sch. II of the Limitation Act (IX of 1871), were advisedly omitted from Art. 134, Sch. II of the Limitation Act (XV of 1877), to exclude the possible inference that absence of notice of the real owner's claim was necessary to enable a purchaser to avail himself of the Article. YESU RAMJI KALNATH *v.* BALKRISHNA LAKSHMAN.

[I. L. R. 15 Bom. 583

———, Art. 135.

See ART. 132.

[I. L. R. 20 Calc. 269

———, Art. 136.

See ART. 138.

[I. L. R. 15 Mad. 33

———, Art. 136, and Art. 137.—*Suit by purchasers against third persons for possession.*] Articles 136 and 137 of Sch. II of the Limitation Act (XV of 1877) apply to suits brought by purchasers against third persons in possession of the land, in whose favour limitation runs against the purchaser, in the same way as it would against the owner with whose rights the purchaser is clothed. LAKSHMAN VINAYAK KULKARNI *v.* BISANSING.

[I. L. R. 15 Bom. 261

———, Art. 137.

See ART. 136.

[I. L. R. 15 Bom. 261

———, Art. 138, and Art. 136.—*Suit for possession by assignee of purchaser at sale in execution of decree.*] Limitation Act, 1877, Sch. II, Art. 138, and not Art. 136, is applicable to a suit brought by the assignee of a purchaser of land at a Court-sale to obtain possession of the land. ARUMUGA *v.* CHOCKALINGAM.

[I. L. R. 15 Mad. 331

1.—Art. 141.—*Limitation Act (XIV of 1859), s. 1, cl. 12—Suit by reversioner on expiry of widow's and daughter's estate.*] Plaintiff sued in 1887 to recover property as part of the estate of his maternal grandfather, who died about 1845, leaving (1) a widow, who inherited the property and died in 1846; (2) his daughter by her, who took the property on her mother's death and alienated it to the defendants about 1850 and died before suit; and (3) the plaintiff's mother, who was his daughter by another wife. The plaintiff's mother made no claim on the property and died in 1883:—*Held*, the suit was not barred by limitation. SAMBASIVA *v.* RAGAVA.

[I. L. R. 13 Mad. 512

2.—Art. 141.—*Reversioner—Adverse possession—Hindu law—Widow, suit to set aside alienation by.*] *R* died, leaving him surviving, his son *G* and his widow *J*. On *R's* death *G* succeeded to *R's* property and died subsequently, leaving him surviving his widow *S*, who lived with her brother. The property remained in the possession of *J*, the

LIMITATION ACT (XV OF 1877), Art. 141 —*continued.*

widow of *R*. In 1862 *J* sold the property to the defendants, who entered into possession forthwith. In 1874 *J* died, and subsequently *S* died. In 1886 the plaintiff, as reversionary heir, sued to set aside the alienation made by *J* in 1862 to the defendants:—*Held*, that the plaintiff's suit was barred. The adverse possession of *J* and her alienees for more than twelve years during *S's* life was a bar, not only to *S*, but also to the claim of the reversionary heirs on her death. BABU *v.* BHIKAJI. IBRAHIM *v.* BHIKAJI

[I. L. R. 14 Bom. 317

3.—Art. 141.—*Will of owner leaving residue of estate to dharma and also leaving four immoveable properties to dharma after death of his widow, to whom a life estate was given—Hindu law—Widow—Suit by heir of owner after death of widow.*] *K* died childless in 1869, leaving two widows, *C* and *N*, him surviving. By his will he bequeathed certain legacies and gave four immoveable properties to his widows for their lives. The rest of his estate and, on the death of his widows, these four properties also, he left to *dharma*. *C* died in 1871; *N* died in 1888. The plaintiff was the son of the testator's brother *G*, who died in 1884. In December 1888 he filed this suit, claiming to be entitled, as heir of his uncle the testator, to the said immoveable properties and to such portion of the moveable property as had not been disposed of by the widows. He contended that the bequest in the will to *dharma* was void, and that the residue consequently came to him as heir. The defendants (*inter alia*) pleaded limitation: — *Held* that the bequest to *dharma* was void, and that there was an intestacy as regards the four immoveable properties after the widows' death; and as to the residue, that the suit was not barred by limitation. The Article of the Limitation Act (XV of 1877) applicable was Art. 141. Under that Article the plaintiff had twelve years from the death of *N*, which took place in 1888. As long as either *C* or *N* lived, the plaintiff had no right of action. He could not sue for possession, and he had no right whatever to interfere in the management or disposition of the income of the property. CURSANDAS GOVINDJI *v.* VUNDRAVANDAS PURSHOTAM.

[I. L. R. 14 Bom. 482

4.—Art. 141.—*Suit by daughter entitled to possession of immoveable property on death of Hindu widow.*] The daughter of a separated Hindu, who was entitled to succeed to her father's immoveable property upon his widow's death, instituted, after the widow's death, a suit for possession of such property against certain persons who, upon the Hindu's death, had obtained possession and held it adversely to the widow:—*Held*, by the Full Bench, that Art. 141 of Sch. II of the Limitation Act (XV of 1877) was applicable, and that limitation ran from the date of the widow's death. *Srinath Kur* v. *Prosunno Kumar Ghose*, I L. R. 9 Calc. 934, followed. RAM KALI *v.* KEDAR NATH.

[I. L. R. 14 All. 156

LIMITATION ACT (XV OF 1877), Art. 141 —*concluded.*

5.—Art. 141.—*Limitation Act (IX of 1871) Art. 142—Dismissal of Hindu daughter's claim as heiress of a share, as barred by time, effect of, in regard to right of reversioner after her—Res judicata—Adverse possession.*] In a suit in which the parties were descendants of a common ancestor, who had daughters only, one of the latter having been the mother of the first defendant, who was in possession of the ancestral estate, the plaintiff, son of the last surviving daughter, claimed, on her death, possession of his share by inheritance, and also of a share acquired by him by gift from another of the defendants, a son of another daughter of the common ancestor. The defence was that a suit, brought by the plaintiff's mother, in her lifetime, against the same defendant, for her share, had been dismissed by a final judgment on the ground of her claim having been barred by limitation:—*Held*, that the estate, which would have devolved on the plaintiff's mother as survivor of her sisters, was similar to the inheritance of a widow, the same result following the dismissal of the daughter's suit that ensued in regard to the decree adverse to the widow in *Katama Natchiar* v. *The Raja of Shivagunga*, 9 Moo. I. A. 539, where a decree, duly obtained against the widow, bound the reversioner. The previous decree dismissing the daughter's suit as barred was binding on her son. His claim therefore failed, not only as to his share by inheritance, but, for similar reasons, as to the share acquired by him from the defendant donor. Article 141 in the schedule to Act XV of 1877, fixing the date of the female heir's decease as the starting point for limitation, did not alter the existing law as to the effect of a decree adverse to the predecessor as representing the estate, nor did it give a new starting point to the successor, nor did Art. 142 in the schedule to Act IX of 1871. HARI NATH CHATTERJEE *v.* MOTHURMOHUN GOSWAMI.

[I. L. R. 21 Calc. 8

[L. R. 20 I. A. 183

——, Art. 142.

See ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.

[I. L. R. 19 Calc. 660

[I. L. R. 14 Bom. 458

[I. L. R. 16 Bom. 343

[I. L. R. 14 Mad. 96

1.—Art. 142.—*Proprietors having refused at the first regular settlement to engage, and others having been admitted as malguzars of the land, effect of lapse of time—Discontinuance of possession.*] The proprietary right would continue to exist until by the operation of the law of limitation, it has become extinguished; but if a claim comes within the terms of Art. 142 (enacting that when the plaintiff, while in possession of the property, has been dispossessed, or has discontinued possession, limitation shall run from the date of the dispossession or discontinuance), in such a case, by the law of Act XV of 1877,

LIMITATION ACT (XV OF 1877), Art. 142 —*continued.*

and previously of Act IX of 1871, adverse possession is not required to be proved in order to maintain a defence. At the regular settlement in the Delhi District (1843) the plaintiffs' ancestors, *ex-mafidars* of a plot on which the rent-free tenure had been resumed in 1838, declined to engage for the revenue; and the plot was assessed along with the village in which it was; the village proprietors through the *lambadars* engaging for and obtaining the land. At the revision of settlement, more than thirty years after, the plaintiffs claimed possession, alleging their title, and that the village co-parceners held only in farm from the Collector for the period of settlement:—*Held*, that there had been a dispossession, or discontinuance of possession, within the meaning of Art. 142; and that whether any proprietary right had existed or not in the plaintiffs' ancestors, the twelve years' limitation ran from the date of the dispossession or discontinuance. MAHAMMUD AMANULLA KHAN *v.* BADAN SINGH.

[I. L. R. 17 Calc. 137
[L. R. 16 I. A. 148

2.—Art. 142.—*Possession, suit for—Privy Council, practice of—Concurrent decisions on fact—Evidence as to ownership of property held benami.*] Two properties bought by a Mahomedan father in his lifetime, but held in the names of members of his family, were the subject of dispute after his death, the question being whether they belonged to his estate, so as to be divisible among the sharers in the inheritance, or had been held so that the beneficial interest in them belonged to those of his children who had been born of one of his two wives, excluding the sons born of his other wife. The Courts below decided in favour of the sons of the wife first married. As to one of the properties they concurred in finding the facts entitling these sons alone, and the Committee preferred not to depart from the general rule as to concurrent decisions on fact. As to the other property, both the Courts found that there had been a transfer from the name of the original *benamidar* into the name of the wife first married; but, whereas the first Court found that this change was intended to give her the beneficial interest, which thenceforth belonged to her, and to her sons after her, the Appellate Court found that the transfer was simply from one *benamidar* to another, although after the death of the mother, the property had been treated as that of her sons. Accordingly, as to this the evidence was considered, and their Lordships inclined to the view taken by the first Court. However, the title not having been clearly proved, they preferred to rest their decision on the possession found. The claimants, and their father before them, having together been out of possession for more than twelve years before action brought, limitation was an absolute bar. ASGHAR REZA *v.* MEDHI HOSSEIN.

[I. L. R. 20 Calc. 560.
[L. R. 20 I. A. 38

LIMITATION ACT (XV OF 1877), Art. 142 —*concluded.*

3.—Art. 142, and Art. 44.—*Mortgage, suit for redemption of — Equity of redemption, purchase of, by mortagagee—Adverse possession by mortgagee.*] The plaintiff sued to redeem certain land which he alleged had been mortgaged by his father in 1858 to one *B*, the grandfather of the first defendant. The defendants alleged that the mortgage was executed, not to *B*, but to the father of the second defendant, and that in 1863 the equity of redemption had been sold to the mortgagee by the widows of the mortgagor, the plaintiff being then a minor. The defendants contended that this suit was really to set aside the sale of 1863, and was barred by Art. 44 of the Limitation Act (XV of 1877). The second defendant also pleaded adverse possession. The plaintiff contended that the second defendant and his father had possession of the land merely as the agents or trustees of the mortgagee:—*Held*, that cl. 44 of the Limitation Act did not apply, and that the suit was not barred. The necessity of impugning the sale of 1863 to the second defendant arose from the second defendant's resisting the plaintiff's claim to redeem the mortgage. *Held*, also, that the second defenant, having entered into possession as mortgagee, could not afterwards set up an adverse possession as owner so as to defeat the plaintiff's right to redeem. BHAGVANT GOVIND *v.* KONDI VALAD MAHADU.

[I. L. R. 14 Bom. 279

4.—Art. 142, and Art. 144.—*Suit for possession alleging obstruction to possession—Adverse possession.*] The plaintiff sued to recover possession of certain land, together with mesne profits until recovery of possession, alleging that he had obtained possession under his sale, and that his possession was obstructed by the defendants:—*Held*, that the suit fell under Art. 142 and not Art. 144 of the Limitation Act. FAKI ABDULLA *v.* BABAJI GUNGAJI.

[I. L. R. 14 Bom. 458

——, Art. 144. *Col.*
1. Interest in Immoveable Property ... 635
2. Adverse Possession 635

See ART. 47.
[I. L. R. 19 Calc. 646

See ART. 91.
[I. L. R. 17 Bom. 755
[I. L. R. 19 Calc. 629
[I. L. R. 14 Mad. 26; 101
[I. L. R. 16 Mad. 311

See ART. 120.
[I. L. R. 16 Mad. 456

See ART. 131.
[I. L. R. 15 Bom. 135

See ART. 142.
[I. L. R. 14 Bom. 458

See ART. 147.
[I. L. R. 16 Mad. 64

LIMITATION ACT (XV OF 1877), Art. 144 —*continued.*

See ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.

[I. L. R. 19 Calc. 660
[I. L. R. 14 Bom. 458
[I. L. R. 14 Bom. 96

(1) INTEREST IN IMMOVEABLE PROPERTY.

1.—Art. 144.—*Saranjam—Right to possession and management of saranjam.*] The right to possession and management of a *saranjam* is an interest in immoveable property within the meaning of Art. 144 of Sch. II of the Limitation Act XV of 1877; and where the defendant had enjoyed that interest since 1866, at which date the plaintiff who had been in correspondence with Government with reference to his claim against the defendant was referred by Government to the Civil Courts, the plaintiff's claim was, in a suit brought in 1885 held to be barred by limitation. NARAYAN JAGANNATH DIKSHIT *v.* VASUDEV VISHNU DIKSHIT.

[I. L. R. 15 Bom. 247

2.—Art. 144, and s. 26.—*Suit to recover possession of mango trees—Adverse possession for twelve years by taking fruit—Easement.*] The plaintiff having brought a suit to recover possession of mango trees growing on his own land, and the lower Courts having found that the defendant had, during twelve years preceding the suit, adverse possession by taking the fruit thereof:—*Held*, that the claim was for possession of an interest in immoveable property and was governed by the limitation of twelve years prescribed by Art. 144 of the Limitation Act XV of 1877. BAPU *v.* DHONDI.

[I. L. R. 16 Bom. 353

(2) ADVERSE POSSESSION.

3.—Art. 144.—*Application of Article.*] Article 144 of Sch. II of Act XV of 1877, as to adverse possession, only gives the rules of limitation where there is no other Article in the Schedule specially providing for the case. MAHAMMUD AMANULLA KHAN *v.* BADAN SINGH.

[I. L. R. 17 Calc. 137
[L. R. 16 I. A. 148

4.—Art. 144—*Symbolical possession.*] The plaintiff's predecessor in title, one *L N*, acquired the share of 2 annas and 8 pies in certain *mouzahs* by purchase at a sale held in execution of his own decree against one *H N*, and in September 1874 obtained symbolical possession. In December 1874, *H N* and his co-sharers granted a perpetual lease to one *G* reserving a nominal rent. Subsequently *L N* brought a suit for possession of the 2 annas and 8 pies share against *H N* and his co-sharers, and after the death of *L N* the plaintiff obtained a decree. In March 1882, the plaintiff obtained symbolical possession in execution of that decree. On the 29th January 1887 one *B M* purchased at a sale in execution of a decree against *G* the right of the latter as lessee and obtained

LIMITATION ACT (XV OF 1877), Art. 144 —*continued.*

(2) ADVERSE POSSESSION—*continued.*

through the Court symbolical possession of the same. In a suit brought by the plaintiff against *B M* and *G* to recover possession of the 2 annas and 8 pies share in December 1887, that is, thirteen years after the grant of the lease by *H N* and his co-sharers to *G*:—*Held*, that the suit was barred by limitation under Art. 144 of the Limitation Act. *Held*, also, that the lease purporting to be a perpetual lease without reversion to the grantors, and no rights reserved to them but only a nominal rent, symbolical possession as against the grantors would not be effective as against the lessee and thus save the bar of limitation. *Bejoy Chunder Banerjee* v. *Kally Prosonno Mookerjee*, I. L. R. 4 Calc. 327, referred to. GOSSAMI DALMAR PURI *v.* BEPIN BEHARY MITTER.

[I. L. R. 18 Calc. 520

5.—Art. 144.—*Suit for alluvial land for which there has been a decree—Judicial determination of area of land—Cause of action.*] A consent decree of 1873 decided that certain alluvial land belonged to the plaintiff's village Sipah. The area was judicially determined in 1876 on a map of 1874, but actual possession was not obtained from the defendant who owned villages on the opposite side of the river:—*Held*, in a suit to recover the land, that the twelve years which would bar the suit ran from 1876, the judicial ascertainment of the land decreed, and the suit having been brought within twelve years from that time was not barred. JAGAJIT SINGH *v.* SARABJIT SINGH.

[I. L. R. 19 Calc. 159
[L. R. 18 I. A. 165

6.—Art. 144.—*Suit for possession—Purchaser at a patni sale, under Regulation VIII of* 1819, *how affected by adverse possession prior to date of sale.*] A person who has held possession of property adversely against a former proprietor cannot be allowed, in a suit for possession, to set up such adverse possession against a person who has purchased the property at a *patni* sale, held under Regulation VIII of 1819, within twelve years from the date of the institution of the suit. The purchaser is entitled to the *patni* free from all incumbrances and in the condition in which it was created. *Womesh Chunder Goopto* v. *Raj Narain Roy*, 10 W. R. 15, referred to. KHANTOMONI DASI *v.* BIJOY CHAND MAHATAB.

[I. L. R. 19 Calc. 787

7.—Art. 144.—*Suit for possession—Redemption of mortgage.*] In a suit in 1887 to redeem a *kanom* for Rs. 62 of 1835, it appeared that in 1862 the mortgagee had received a renewal of his *kanom* for a larger amount, and that the defendant had produced the document of renewal in 1864 to the knowledge of the plaintiff in a suit to which the plaintiff was a party:—*Held*, that the defendant's possession had not become adverse from 1864 so as to make it necessary for the plaintiff to sue within twelve years, and that the suit was not

LIMITATION ACT (XV OF 1877), Art. 144 —*continued.*

(2) ADVERSE POSSESSION—*continued.*

barred by limitation. *Madhava* v. *Narayana* I. L. R. 9 Mad. 244, distinguished. RAIRU NAYAR *v.* MOIDIN.

[I. L. R. 13 Mad. 39

8.—Art. 144.—*Suit by a trustee of a devasom disaffirming the act of his predecessor.*] The trustee of a Malabar *devasom*, who had succeeded to his office in June 1883, sued in 1887 to recover for the *devasom* possession of land which had been demised on *kanom* by his predecessor in February 1881, on the ground that the demise was invalid as against the *devasom*. The defendant had been in possession of the land for more than twelve years, falsely asserting the title of *kanomdar* with the permission of the plaintiff's predecessor in office:—*Held*, the suit was not barred by limitation. VEDAPURATTI *v.* VALLABHA.

[I. L. R. 13 Mad. 402

9.—Art. 144.—*Burden of proof.*] The plaintiff, who was the sister of the defendant, sued in 1888 to recover from him a moiety of a *paramba* purchased by them jointly in 1877. In 1878 the plaintiff went to live elsewhere, but, from time to time, returned and spent a few days with the defendant on the land in suit. The defendant pleaded limitation:—*Held*, that Limitation Act, Sch. II, Art. 144, applied to the suit, and the burden of proving adverse possession lay on the defendant. ALIMA *v.* KUTTI.

[I. L. R. 14 Mad. 96

10.—Art. 144.—*Suit to recover estate granted by predecessor as service tenure with rent reserved.*] In a suit brought in 1886 by a zemindar to recover an estate granted by his predecessor to the predecessor of the defendant on a service tenure, a small money rent being also reserved, it appeared that in 1864 the right of the plaintiff's predecessor to rent had been established by suit, but there was no evidence that the service was then dispensed with, but in 1885, it was intimated to the defendant that the service was dispensed with and a notice to quit was given to him; the option of holding the estate at an enhanced rent was, however, given to him at the same time:—*Held*, that the suit was not barred by limitation, no adverse possession being shown. MAHADEVI *v.* VIKRAMA.

[I. L. R. 14 Mad. 365

11.—Art. 144.—*Gift of a life interest.*] The *karnavan* of a Malabar *tarwad* executed an instrument described as a *vasyat* whereby he made a gift of a life-interest in certain self-acquired property, to come into operation at once in 1854. The members of his *tarwad* acquiesced in this disposition of the property. The donor died in 1859, and the donee in 1880. In a suit brought in 1886 by his successor in the office of *karnavan* to recover the property:—*Held*, that time began to run for the purposes of limitation from the death of the donee, and therefore the suit was not barred. KUTTYASSAN *v.* MAYAN.

[I. L. R. 14 Mad. 495

LIMITATION ACT (XV OF 1877), Art. 144 —*continued.*

(2) ADVERSE POSSESSION—*continued.*

12.—Art. 144.—*Suit by karnavan to recover lands alienated by previous karnavan.*] The plaintiff sued as the *karnavan* of a Mapilla *tarwad* to recover lands in the possession of the defendants, who were a donee from and the descendants of a previous *karnavan* and their tenants. It appeared that the alleged previous *karnavan* had died less than twelve years before the suit was filed, but more than twelve years before the joinder, as a supplemental defendant, of one to whom he had conveyed certain property by way of gift five years before his death:—*Held*, that the suit was barred by limitation as against the donee above referred to, her possession having been adverse to the *tarwad* since the date of the gift. BYATHAMMA *v.* AVULLA.

[I. L. R. 15 Mad. 19

13.—Art. 144.—*Anubhavam tenure—Forfeiture by alienation—Landlord and tenant.*] Lands in Malabar were demised on *anubhavom* tenure. Some of them were alienated by the tenant, but the landlord subsequently accepted rent. More than twelve years after the alienation, the landlord sued to eject the tenant on the ground that the tenure was thereby forfeited. The tenant for the first time in his written statement denied the landlord's title:—*Held*, that the cause of action alleged in the plaint was barred by limitation. MADAVAN *v.* ATHI NANGIYAR.

[I. L. R. 15 Mad. 123

14.—Art. 144.—*Landlord and tenant—Perpetual lease—Surrender of lease.*] The *karnavan* of a Malabar *kovilagom* executed a *kuikanom* lease of certain land, the *jenm* of the *kovilagom*, in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present *karnavan* sued in 1889 to recover possession of the land:—*Held*, that the perpetual lease, as being of an improvident character, was *ultra vires* and void; that the original lease was not surrendered by reason of the acceptance of the subsequent lease; that the suit was not barred by limitation, the possession of the defendants never having been adverse to the plaintiff's *kovilagom*. RAMUNNI *v.* KERALA VARMA VALIA RAJA.

[I. L. R. 15 Mad. 166

15.—Art. 144.—*Deed given by debtor to creditor assigning or appropriating rents till debt was paid—Possession of debtor by tenants.*] Where under an instrument a debtor allotted to his creditor his *aivaj* on account of *deshpande hâk* and *inami* recoverable from the villages and undertook not to meddle till the *aivaj* was paid, and the instrument did not describe the lands mentioned therein by metes and bounds, but only as being in the occupation of certain persons paying so much rent, and contained a clause that the *aivaj* of Rs. 63 (the sum total of rents) had been allotted, and that the creditor might take *kabuliats* from the occupants and make the recoveries:—*Held*, that Art. 144, Sch. II of the Limitation Act (XV of 1877) applied to the creditor-plaintiff's

LIMITATION ACT (XV OF 1877), Art. 144 —*continued.*

(2) ADVERSE POSSESSION—*continued.*

right of possession, and the defendant not being in adverse possession for twelve years prior to the institution of the suit, the plaintiff's claim was held not barred. HANMANT RAMCHANDRA DESHPANDE *v.* BABAJI ABAJI DESHPANDE.

[I. L. R. 16 Bom. 172

16.—Art. 144.—*Symbolical possession.*] The plaintiff purchased the land in dispute on 20th April 1876, at a Court sale held in execution of a decree against defendant's father and obtained symbolical possession through the Court on 7th September 1876. At the date of the sale, and subsequently thereto, the defendant was in actual possession of the land in question. On 5th September 1888 the plaintiff filed the present suit to recover possession of the land:—*Held*, that the suit was time-barred, the defendant's possession having been adverse to the plaintiff for more than twelve years. LAKSHMAN *v.* MORU.

[I. L. R. 16 Bom. 722

17.—Art. 144, and s. 19.—*Madras Regulation (II of* 1802), *s.* 18—*Starting point of limitation—Acknowledgment—Adverse possession of partial interest in land.*] Suit by the zemindar of Shivagunga to recover certain land as part of his zemindari from the defendants who claimed title under a deed of gift dated in 1830 from the person then in possession of the zemindari. The *istimrar* zemindar died in 1829. After his death certain persons were in possession without title; but, in February 1863, his daughter, *K N*, obtained a decree in the Privy Council against the person then in possession of the zemindari in execution of which she was put into possession. In 1876 she brought a suit against the present defendants to recover the property now in question; but that suit was withdrawn on a petition presented by her vakil stating that the case had been compromised and praying that the suit be struck off the file, which was accordingly done. She died in 1877, and the plaintiff was her successor. It appeared that *poruppu* was always paid for the land now in question:—*Held* (1) that the payment of *poruppu* did not prevent the possession of the defendants from being adverse to the plaintiff, as possession of a limited interest in immoveable property may be as much adverse for the purpose of barring a suit for the determination of that limited interest as is adverse possession of a complete interest in the property to bar a suit for the whole property; (2) that the date of the Privy Council decree could not be taken as the starting point of limitation; (3) that the transactions in reference to the suit of 1876 did not amount to an ackowledgment of the zemindarni's title, and did not give a new cause of action to her successors; (4) that the cause of action having arisen to the then rightful owner of the zemindari in 1830, the plaintiffs' suit was barred by limitation. SANKARAN *v.* PERIASAMI.

[I. L. R. 13 Mad. 467

LIMITATION ACT (XV OF 1877), Art. 144 —*concluded.*

(2) ADVERSE POSSESSION—*concluded.*

18.—Art. 144, and s. 28—*Sale in execution of decree—Suit to recover possession of property sold in execution—Possession of a person having no title.*] *K* obtained a decree against *G*, and in execution purchased *G's* property on the 9th August 1872. Plaintiff obtained a decree against *K*, and in execution purchased the property on the 21st August 1882. On plaintiff's going to take possession, defendant No. 1 obstructed him, on the ground that he had purchased the property from *K* at a private sale, dated the 1st September 1876. The plaintiff thereupon, on the 6th September 1886, brought the present suit to recover possession of the property:—*Held*, that the title of defendant No. 1 to the land in dispute being not proved, Art. 144 of the Limitation Act (XV of 1877) was applicable to the plaintiff's claim, and that the suit being brought within twelve years from the date of the purchase set up by defendant No. 1 (which was held by the lower Courts not proved), the claim was not barred. Want of possession for twelve years after the date of purchase would extinguish the purchaser's title. *Ram Prosad Janna* v. *Lakhi Narain Pradhan* I. L. R. 12 Calc. 197, and *Sheo Prasad* v. *Udai Singh*, I. L. R. 2 All. 718, referred to. LAKSHMAN VINAYAK KULKARNI *v.* BISANSING.

[I. L. R. 15 Bom. 261

19.—Art. 144, and Art. 123.—*Distributive share under Mahomedan law—Suit for possession.*] A Mapilla, alleging that certain "family property" had been enjoyed by herself and the defendants (who were her relations on the mother's side) in common till one year before suit, when she was excluded from possession, now sued to recover the share to which she claimed to be entitled under the Mahomedan law of inheritance. It appeared that the property had been acquired in the lifetime of the plaintiff's maternal grandfather, who had died more than thirty years before suit, and that one of his sons had obtained a decree for his share of it in a suit to which among others the plaintiff and the father of the present contesting defendants were parties, and that a plea then raised by the latter to the effect that the property had been acquired by him was overruled. The plaintiff's mother died about twenty years before the present suit:—*Held*, by the Full Bench, that the plaintiff's cause of action arose not from the date when her share became deliverable on the death of the persons to whom the property originally belonged, but on her exclusion from enjoyment of the property, and that the suit was governed by Art. 144 and not Art. 123 of the Limitation Act, and was not barred by limitation. ABDUL KADER *v.* AISHAMMA.

[I. L. R. 16 Mad. 61

——, Art. 145.—*Collector—Depositary—Suit to recover surplus sale-proceeds of sale for arrears of revenue.*] Where *A* instituted a suit in November 1889 to recover from the Secretary of State in Council the surplus sale-proceeds of three *taluks* sold for arrears of Government Revenue

LIMITATION ACT (XV OF 1877), Art. 145 —*concluded.*

on 3rd October 1877, which sale-proceeds were in the hands of the Collector:—*Held*, that the Collector was not a depositary of the money within the meaning of Art. 145 of Sch. II. SECRETARY OF STATE FOR INDIA *v.* FAZAL ALI.

[I. L. R. 18 Calc. 234

See SECRETARY OF STATE FOR INDIA *v.* GIRJU PROSHAD DHUR.

[I. L. R. 20 Calc. 51

———, Art. 147.

See ART. 132.

[I. L. R. 20 Calc. 269

1.—Art. 147.—*Equitable mortgage by deposit of title-deeds—Suit by equitable mortgagee for foreclosure and sale—Right of suit.*] An equitable mortgagee by deposit of title-deeds is a mortgagee within the meaning of Art. 147, Sch. II of the Limitation Act (XV of 1877), and the period of limitation for a suit by such a mortgagee is sixty years, as therein prescribed. A mortgagee by deposit of title-deeds has the right to sue for foreclosure or sale. MANEKJI FRAMJI *v.* RUSTOMJI NASERWANJI MISTRY.

[I. L. R. 14 Bom. 269

2.—Art. 147.—*Mortgage-bond containing a power of sale in case of default—Suit by a mortgagee to recover the mortgage-debt from mortgaged property and from mortgagor personally—Personal remedy against mortgagor.*] Where certain land was given as security for repayment of a loan under an instalment bond which contained an express provision for sale of the property in case of default, it was *held*, that the bond was a mortgage-bond, and that Art. 147 of the Limitation Act (XV of 1877) applied to a suit to recover the instalments due under the bond by sale of the mortgaged property:—*Held*, also, that the limitation for the personal remedy against the mortgagor was three years. BULAKHI GANU SHET *v.* TUKARAMBHAT.

[I. L. R. 14 Bom. 377

3.—Art. 147.—*Mortgage as distinguished from a charge—Suit to enforce mortgage lien by sale of mortgaged property — Construction of mortgage.*] A bond contained the following stipulation as regards the liabilities of the sureties:—"In respect of this we have given to you, in writing, as a *nazar gahan* (*i.e.* sight mortgage), the fields which belong to ourselves, and which we ourselves are enjoying. If we do not pay according to contract, you may sell the said fields through the Court and recover the amount. If any balance remains, we will pay it off personally or by means of our other property":—*Held*, that the above stipulation created a mortgage and not a mere charge on the fields in question, and that Art. 147 of Sch. II of the Limitation Act (XV of 1877) applied to a suit by the obligee against the surety under the bond to enforce his lien by sale of the property mortgaged. ONKAR RAMSHET MARWADI *v.* GOVARDHAN PARSHOTAMDAS.

[I. L. R. 14 Bom. 577

LIMITATION ACT (XV OF 1877), Art. 147 —*concluded.*

4.—Art. 147.—*Bonds creating interest in land, construction of—Mortgage—Charge on immoveable property.*] Bonds by which the property mentioned therein is declared to be a security for a loan, have been always regarded in the Bombay Presidency as creating the relationship of mortgagor and mortgagee, and fall under Art. 147 of Sch. II of the Limitation Act (XV of 1877.) VENKATESH SHETTI *v.* NARAYAN SHETTI.

[I. L. R. 15 Bom. 183

5.—Art. 147, and Art. 144.—*Suit for foreclosure or sale—Transfer of Property Act (IV of 1882), ss. 58 (c), 67, 87—Mortgage by conditional sale—Decree for foreclosure and possession.*] On 28th March 1871 the defendant's father borrowed a sum of money from the plaintiff's father and placed him in possession of certain land under an instrument of mortgage, which provided for the application of the usufruct in liquidation of the interest and then in reduction of the principal; the instrument also contained a covenant for the repayment, in four years, of the balance that might then be due by the mortgagor, and a stipulation that, on default, the mortgagor was to surrender the property to the mortgagee as if it had been sold to him. In 1874, the mortgagor resumed possession without discharging the mortgage-debt. The mortgagee having died, his sons, on 14th April 1888, filed the present suit on the mortgage and prayed for a decree for foreclosure or sale:—*Held*, that the suit was not barred by limitation, and the plaintiffs were entitled to a decree for foreclosure with a direction that possession be delivered to them. AMMANNA *v.* GURUMURTHI.

[I. L. R. 16 Mad. 64

1.—Art. 148.—*Joint mortgagors—Redemption by one co-mortgagor—Rights of redeeming co-mortgagor as against the others.*] Where one of several co-mortgagors redeems the whole mortgage he thereby puts himself into the position of the mortgagee as regards that portion of the mortgaged property which represents the interests of the other co-mortgagors, and the period of limitation applicable to a suit for redemption brought by the other co-mortgagors is that provided for by Art. 148 of Sch. II of the Limitation Act (XV of 1877). Such period begins to run from the date when the original mortgage was redeemable, and not from the date of its redemption by the aforesaid co-mortgagor. *Nura Bibi* v. *Jagat Narain*, I. L. R. 8 All. 295; and *Raghubir Sahai* v. *Bunyad Ali*, Weekly Notes, 1886, p. 152, followed; *Umr-un-nissa* v. *Muhammad Yar Khan*, I. L. R. 3 All. 24, distinguished; *Ram Singh* v. *Baldeo Singh*, Weekly Notes, 1885, p. 300, referred to. ASHFAQ AHMAD *v.* WAZIR ALI.

[I. L. R. 14 All. 1

2.—Art. 148.—*Limitation Act (IX of 1871) s. 148—Acknowledgment of title by one of several mortgagees as agent for the others—Acknowledgment by one of several heirs of the mortgagee—Redemption, suit for.*] Under Art. 148 of the Limitation Act (IX of 1871), an acknowledgment of

LIMITATION ACT (XV OF 1877), Art. 148 —*concluded.*

the mortgagor's title by one of several mortgagees as agent for the others is wholly ineffectual, and does not bind the rest So, too, is an acknowledgment by one of several heirs of the original mortgagee without effect The expression "some persons claiming under him" in Art. 148 of the Act means some person claiming under him the *entirety* of the mortgagee's rights. The property in dispute was mortgaged by *H B* to the firm of *K B* in 1816. In 1830 *J*, one of the sons and heirs of *K*, who was then manager of the firm, on behalf of the whole family, sub-mortgaged the property in dispute to a third party, under a bond which recited the original mortgage by *H B* to *K*. In 1885 the defendant, who was a descendant of *K*, redeemed the sub-mortgage effected by *J*. In 1887 the plaintiff, having purchased the equity of redemption from *H B's* descendants, filed the present suit for redemption of the mortgage of 1816. The plaintiff relied on the acknowledgment made by *J* in 1830 as giving a fresh starting point to limitation:—*Held*, that the suit was barred by limitation. The acknowledgment by *J*, whether as manager of the firm or as one of the heirs of the original mortgagee, was not sufficient under Art. 148 of the Limitation Act (IX of 1871). BHOGILAL *v.* AMRITLAL.

[I. L. R. 17 Bom. 173

3.—Art. 148, and Art. 132.—*Interest—Mortgagee's right to interest in a redemption suit—Extent of the right—Transfer of Property Act (IV of 1882), s. 58.*] In 1882 the plaintiffs sued to redeem a mortgage effected in 1833. The Court of First Instance allowed the mortgagee interest from the date of the bond. The Appellate Court reduced the interest awarded to the period of six years:—*Held*, reversing the decision of the lower Appellate Court, that the mortgagee was entitled to claim interest from the date of the bond up to the date of the decree Art. 148 and not Art. 132 applies to such a suit; but no provision of limitation is made by the Article for the payment of interest on the sum due to the mortgagee. In s. 58 of the Transfer of Property Act, the mortgage-money is interpreted to include the interest due, and no limit to the payment of interest is fixed. DAUDBHAI RAMBHAI *v.* DAUDBHAI ALLIBHAI.

[I. L. R. 14 Bom. 113

——, Art. 152.

See s. 12.

[I. L. R. 12 All. 461

——, Art. 155.—*Appeal in criminal case—Appeal from the Resident's Court, Bangalore.*] A person who was being defended by Counsel on a criminal charge interfered in the examination of a witness and made a defamatory statement with regard to his character. He was now charged with defamation and convicted in the Resident's Court at Bangalore. On an appeal to the High Court, preferred more than sixty days after the conviction, it was contended that it was not an appeal under the Criminal Procedure Code, but under the Extradition Act: and the sixty days,

LIMITATION ACT (XV OF 1877), Art. 155 —*concluded.*

limitation therefore did not apply to it:—*Held*, that the appeal should be admitted. HAYES *v.* CHRISTIAN.

[I. L. R. 15 Mad. 414

——, Art. 156.

See s. 12.

[I. L. R. 12 All. 105

——, Art. 164.—*Ex-parte decree—Application to set aside ex-parte decree—Presidency Small Cause Court Act (XV of 1882). s. 37.*] Section 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an *ex-parte* decree. An application to set aside an *ex-parte* decree passed by a Presidency Court of Small Causes falls within the terms of s 108 of the Code of Civil Procedure (XIV of 1882), and the period of limitation for such an application is thirty days as prescribed by Art. 164 of the Limitation Act. ROSHANLAL *v.* LACHMI NARAYAN.

[I. L. R. 17 Bom. 507

——, Art. 167—*Civil Procedure Code*, 1882, *ss.* 318, 334—*Petition by purchaser at Court-sale for possession—Obstruction to execution of decree—Appeal against order.*] On an application made in 1888 under the Civil Procedure Code, s. 318, by the purchaser at a Court-sale (who was the assignee of the decree which was being executed), praying for delivery of possession of the property purchased, it appeared that the sale took place in 1885, that it was confirmed in 1886, and that in January 1887 an order was made for delivery of possession to the purchaser. The judgment-debtor had resisted the purchaser's efforts to obtain possession in 1887, and set up in bar of the application in 1888 an oral agreement alleged to have been made between him and the purchaser. The application was rejected:—*Held*, that the application not being a complaint of obstruction, was not barred by limitation, and should be heard and determined on the merits. MUTTIA *v.* APPASAMI.

[I. L. R. 13 Mad. 504

——, Art. 170.

See s. 12.

[I. L. R. 12 All. 79

——, Art. 175C., and Art. 178.—*Substitution of the heirs of deceased defendant—Civil Procedure Code*, 1889, *ss.* 368, 372—*Substitution of parties.*] After the institution of a suit for dissolution of a partnership, two of the defendants died. More than a year after their death the plaintiffs applied to have the legal representatives of the deceased entered on the record. The Subordinate Judge granted this application, holding that the case was governed by s. 372 of the Code of Civil Procedure (Act XIV of 1882), and that the application was, therefore, within time under Art. 178 of the Limitation Act (XV of 1877):—*Held*, that the case was governed by s. 368, and not s. 372, of the Civil Procedure Code. The application for substitution of the heirs of the deceased defendants ought to have been made within six months, as provided by Art. 175C of the Limitation Act

LIMITATION ACT (XV OF 1877), Art. 175C—*concluded.*

and was barred unless the delay were sufficiently explained. JAMNADAS CHHABILDAS *v.* SORABJI KHARSEDJI.

[I. L. R. 16 Bom. 27

1.—Art. 177.—*Civil Procedure Code, s.* 598—*Application for certificate for appeal to Privy Council.*] In computing the period of limitation for an application for a certificate admitting an appeal to Her Majesty in Council, the time occupied in obtaining copies of the decree and judgment sought to be appealed against cannot be excluded, s. 12 not being applicable. ANDERSON *v.* PERIASAMI.

[I. L. R. 15 Mad. 169

2.—Art. 177.—*Civil Procedure Code, s.* 599—*General Clauses Act* (*I of* 1868), *s.* 3, *cl.* (1)—*Civil Procedure Code Amendment Act* (*VII of* 1888), *s.* 57—*Application for leave to appeal to Her Majesty in Council.*] Section 559 of Act No. XIV of 1882 is not inconsistent with Art. 177 of the Sch. II of Act XV of 1877 as read in conjunction with the provisions contained in the sections of that Act which are applicable to Art. 177. The limitation therefore for an application for leave to appeal to Her Majesty in Council is six months from the date of the decree to appeal from which leave is sought. The provisions of the second paragraph of s. 5 of Act XV of 1877 do not extend to applications for leave to appeal to Her Majesty in Council. *Fazal-un-nissa Begam* v. *Mulo*, I. L. R. 6 All. 250; *Burjore* v. *Bhagana*, I. L. R 10 Calc. 557: L. R. 11 I. A. 7; *Lakshmi* v. *Ananta Shanbaga*. I. L. R. 2 Mad 230; and *Ganga Gir* v. *Balwant Gir*. Weekly Notes, 1881, p. 130, referred to. IN THE MATTER OF THE PETITION OF SITA RAM KESHO.

[I. L. R. 15 All. 14

———, Art. 178.

See ART. 175C.

[I. L. R. 16 Bom. 27

1.—Art. 178.—*Applications for probate or letters or certificates of administration.*] Applications for probate or letters or certificates of administration do not fall within the provisions of Art. 178 of the Limitation Act. KASHI CHUNDRA DEB *v.* GOPI KRISHNA DEB.

[I. L. R. 19 Calc. 48

2.—Art. 178.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 318—*Purchaser at Court-sale—Certificate of confirmation of sale—Application for possession of purchased property—Date of accrual of right to apply for possession.*] The right of a purchaser to apply for possession under s. 318 of the Civil Procedure Code (Act XIV of 1882) accrues to him when the certificate "has been granted,"—that is to say, when it has been issued to him, and the period of limitation for such an application is to be computed from that day. KASHINATH TRIMBAK JOSHI *v.* DUMING ZURAN.

[I. L. R. 17 Bom. 228

LIMITATION ACT (XV OF 1877), Art. 178—*concluded.*

3.—Art. 178.—*Amendment of decree—Civil Procedure Code*, 1882, *s.* 206—*Suit for mesne profits while plaintiff is out of possession.*] There is no limitation for an application under s. 206 of the Civil Procedure Code, to amend a decree, it being the duty of the Court to amend it whenever it is found to be not in conformity with the judgment. *A* instituted a suit for declaration of title and for possession. The decree, which was finally confirmed by the High Court, gave her the declaration sought for, but it contained no direction as to the possession, although the judgment stated that she was entitled to possession. *A's* son (having been substituted in her place) applied to have the decree amended. The lower Appellate Court held that the application was barred by limitation. The High Court on appeal upheld the lower Court's order, not on the ground of limitation, but on the ground that the application to amend the decree had been made in the wrong Court. *A's* son then instituted a fresh suit against the same parties for declaration of title, perpetual injunction, and for mesne profits:—*Held*, that the plaintiff was entitled to have the decree amended under s. 206, Civil Procedure Code, and that, though the plaintiff's claim to possession was barred, yet his right was not extinguished, and he having therefore a subsisting title, was entitled, though out of possession, to maintain the suit so far as it sought to recover mesne profits. KALU *v.* LATU.

[I. L. R. 21 Calc. 259

4.—Art. 178, and Art. 179.—*Application for ascertainment of mesne profits—Civil Procedure Code* (*Act XIV of* 1882), *ss.* 211, 212.] Neither Art. 178 nor Art. 179 of the Limitation Act applies to an application to ascertain the amount of mesne profits awarded by a decree in accordance with the provisions of s. 211 or s. 212 of the Code of Civil Procedure. PURAN CHAND *v.* ROY RADHA KISHEN.

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———, Art. 179.

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See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWER OF COURT, &c.

[I. L. R. 12 All. 571

(1) LAW APPLICABLE TO APPLICATION FOR EXECUTION.

1.—Art. 179. — *Decree of Small Cause Court transferred to High Court for execution — Civil Procedure Codes (Act VIII of* 1859), *ss.* 287, 288 : (*Act XIV of* 1882), *ss.* 227, 228 — *Order in suit liable to be questioned by third persons not parties to suit—Revivor.*] Having regard to the provisions of ss. 227 and 228 of the Code of Civil Procedure (Act XIV of 1882), the period of limitation applicable to the execution of a decree, transmitted by one Court to another for execution, depends on the character of the Court which passed the decree and not on the character of the Court executing it. *S*, a judgment-creditor, who had obtained his decree in the Calcutta Court of Small Causes on the 29th July 1884 had it transferred to the High Court for execution, and took certain proceedings there to execute it, which resulted in an order passed on the 13th June 1885, for payment out to him of certain moneys realised in the proceedings in part satisfaction of his decree. Payment was actually made on the 8th August 1885. The next step in execution was an application made on the 14th September 1888 ; the usual notice was issued, and no cause being shewn by the judgment-debtor, an order was made on the 19th December for the attachment of certain moneys in the hands of a Receiver belonging to the judgment-debtor. These moneys were also attached by other judgment-creditors. The question was then referred to the Registrar to enquire and report, who under the provisions of s. 295 of the Code of Civil Procedure were entitled to share in such moneys, and in what proportion. It was objected that *S* was not entitled to share on the ground that on the 14th September 1888 the right to execute his decree was barred by limitation. The question was referred by the Registrar to the Court :— *Held*, that as under Art. 179, Sch. II of Act XV of 1877 the period applicable to decrees of the Small Cause Court was three years, the application of the 14th September 1888 was barred by limitation, and that *S* was not entitled to share under the provisions of s. 295. *Held*, further, that the order of the 19th December 1888 having been made out of time, though on notice to the judgment-debtor, there was nothing to prevent a third party questioning its propriety, though the parties to the suit might be precluded from doing so. Had it been otherwise — *Quære* whether it would have had the effect of reviving the decree. *Ashootosh Dutt* v. *Doorga Churn Chatterjee*, I. L. R. 6 Calc. 504, doubted. TINCOWRIE DAWN *v.* DEBENDRO NATH MOOKERJEE.

[I. L. R. 17 Calc. 491

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(2) PERIOD FROM WHICH LIMITATION RUNS.

(*a*) CONTINUOUS PROCEEDINGS.

2.—Art. 179.—*Darkhast presented in* 1890, *in legal continuance of a darkhast of* 1882—*Obstruction to execution of decree for partition.*] A *darkhast* is not necessarily cancelled by being taken off the file. Its effect must be determined by the special circumstances of each case. *A* obtained a decree for partition in 1881, and on the 11th March 1882 presented a *darkhast* for complete execution of the decree Having attempted to take possession of a moiety of a house to which he was entitled under the decree, he was obstructed by *S*, and it became necessary for him to file an ejectment suit against *S* before proceeding further with the execution of his partition decree. In August 1885 a second appeal in this ejectment suit was pending in the High Court, and *A*, on the 1st August 1885, obtained an order in the execution-matter, which recited the fact of the second appeal, and that *A* desired that the *darkhast* should "for the present be cancelled." and ordered that "further execution be stopped." Other litigation between *A* and *S* took place, which was finally closed on the 31st October 1889. On the 3rd January 1890, *A* presented a *darkhast* for the execution of the decree of 1881. It was contended that execution was barred, and that the order of 1st August 1885 had cancelled the *darkhast* of 11th March 1882 :—*Held*, that the present application was not barred, the *darkhast* being in legal continuance of the *darkhast* of 1882. CHINTAMAN DAMODAR AGASHE *v.* BALSHASTRI.

[I. L. R. 16 Bom. 294

(*b*) WHERE THERE HAS BEEN AN APPEAL.

3.—Art. 179.—*Execution of decree—Appeal by plaintiff against part of decree making all defendants respondents—Execution of part of decree not appealed against.*] On the 23rd March 1886 the plaintiff obtained a decree in the Court of First Instance against five defendants, declaring his right to certain specific immoveable property, which was, however, modified on an appeal preferred by the defendants, the decree of the lower Appellate Court giving the plaintiff a decree for only two-thirds of the property claimed, and dismissing his suit in respect of the remaining one-third in favour of defendants Nos. 2 and 4. The lower Appellate Court's decree was dated the 13th July 1886. Against that decree plaintiff preferred a second appeal to the High Court, making all the defendants respondents, which appeal was, however, dismissed on the 16th June 1887. The plaintiff on the 13th June 1890 applied for execution of the decree in his favour in respect of the two-thirds of the property held to belong to him, and defendants Nos. 1 and 5 objected on the ground that the right to execution was barred, limitation running from the 13th July 1886, the date of the lower Appellate Court's decree in the plaintiff's favour :—*Held*, that limitation ran from the 16th June 1887, and that the application

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(2) PERIOD FROM WHICH LIMITATION RUNS—*continued.*

(*b*) WHERE THERE HAS BEEN AN APPEAL—*contd.*

was not therefore barred. All the defendants were parties to the second appeal, and the Court to which the application was made for execution was not bound, before allowing execution, to go into all the circumstances of that appeal and consider whether the decree of the lower Appellate Court in favour of the plaintiff for the two-thirds of the property was or was not practically secure; the High Court had all the parties before it, and, if it had been right to do so, might have altered the decree against any of them. *Quære*—Whether under such circumstances the Legislature could have intended the Court executing a decree to go into questions so complicated as to whether in such a case the whole decree was or might have been or become imperilled in the Court of Appeal, and whether the plain words of Art. 179 might not be followed with less of possible inconvenience and complexity even though in some cases it might result in execution of a decree going against a defendant a little more than three years after such decree was practically secure against him. *Nundun Lall* v. *Rai Joykishen*, I. L. R. 16 Calc. 598, cited with approval. KRISTO CHURN DASS *v.* RADHA CHURN KUR.

[I. L. R. 19 Calc. 750

4.—Art. 179.—*Ex-parte decree—Application to set decree aside—Appeal from order rejecting application — Subsequent application for execution of decree more than three years after date of decree.*] The plaintiff obtained an *ex-parte* decree against the defendant on the 10th March 1886. The defendant applied to have the decree set aside. His application was finally rejected by the Appellate Court on 5th March 1887. The decree-holder presented a *darkhast* for execution of the decree on 24th September 1889:—*Held*, that the *darkhast* was time-barred under Art. 179, cl. 2 of the Limitation Act (XV of 1877). The appeal referred to in that clause is clearly an appeal from the decree or order sought to be executed, and not an appeal from an order of the Court refusing to set it aside. The unsuccessful attempts made by the defendants to set aside the *ex-parte* decree could not have the effect of extending the period prescribed by law for execution of the decree. JIVAJI *v.* RAMCHANDRA.

[I. L. R. 16 Bom. 123

5.—Art. 179.—*Execution of decree—"Appeal"—"Final decree or order"—Decree against defendants severally—Appeal by some only of the judgment-debtors—Civil Procedure Code, s.* 544.] Where a decree for possession of immoveable property was passed not jointly, but severally, as against all the defendants individually, and specifically stated the proportions of which they were severally in possession, as also the costs separately payable by each of them to the plaintiff; and where two only of the defendants appealed on

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(2) PERIOD FROM WHICH LIMITATION RUNS—*concluded.*

(*b*) WHERE THERE HAS BEEN AN APPEAL—*concld.*

pleas which did not assail the decree in respect of any right or ground common to the appellants and all or any of the non-appealing defendants, but referred merely to the specific property alleged to be in the appellants' hands:—*Held*, by the Full Bench (BRODHURST and MAHMOOD, JJ., dissenting) that a first application for execution of the original decree against those defendants who had not appealed from it, and which was made five years after the date of the decree, was barred by limitation, and cl. 2 of Art. 179, Sch. II of the Limitation Act (XV of 1877), did not apply so as to make time run from the proceedings in the appeal preferred by the other defendants. That clause applies only to those cases in which the parties to the execution-proceedings were parties to the appeal, or to the class of cases to which s. 544 of the Civil Procedure Code applies. *Wise* v. *Rajnarain Chuckerbutty*, 1, B. L. R. F. B. 258: 10 W. R. 30; and *Mullick Ahmed Zumma* v. *Mahomed Syed*, I. L. R. 6 Calc. 194, approved. *Held*, by BRODHURST and MAHMOOD, JJ., *contra*, that Art. 179, cl. 2, must be construed as applying without any exceptions to decrees from which an appeal has been lodged by any of the parties to the litigation in the original suit. *Nur-ul-Hasan* v. *Muhammad Hasan*, I. L. R. 8 All. 573, followed. MASHIAT-UN-NISSA *v.* RANI.

[I. L. R. 13 All. 1

(3) NATURE OF APPLICATION.

(*a*) GENERALLY.

6.—Art. 179.—*Civil Procedure Code, ss.* 231, 232, 623—*Joint decree-holders—Assignment by operation of law of a share in a decree.*] A Hindu obtained in 1878 a decree for partition of certain property, and he now applied in 1888 to have it executed. He relied in bar of limitation on an application for execution made by his son, who had obtained a degree against him in 1881 in a partition suit, whereby his right was established to one-fifth of whatever should be acquired by the father by virtue of the decree of 1878. The father's application for execution in 1888 was held to be barred by limitation in *Ramasami* v. *Anda Pillai*, I. L. R. 13 Mad. 347. On review it appeared that the son had applied for execution of the whole decree, stating that his father would not join him in such application, and that notice was given to the father:—*Held* (1) that the son was an assignee by operation of law of one-fifth of the judgment-debt in the suit of 1878; (2) that his application accordingly kept the decree alive under Limitation Act, 1877, Sch. II, Art. 179, cl. 4, and the father's application in 1888 was not barred by limitation. In this view no question arose as to the effect of Expl. I, Art. 179 (as to joint decrees): the application by the son for execution as transferee of part of the decree having been an application in accordance

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(3) NATURE OF APPLICATION—*continued.*

(*a*) GENERALLY—*continued.*

with law was sufficient to keep the decree alive. RAMASAMI *v.* ANDA PILLAI.

[I. L. R. 14 Mad. 252

Reversing on review the decision in RAMASAMI *v.* ANDA PILLAI.

[I. L. R. 13 Mad. 347

7.—Art. 179.—*Civil Procedure Code (Act XIV of* 1882), *ss.* 232, 248—*Application for execution by transferee of decree—Benamidar.*] The words "in accordance with law" in Art. 179 of Sch. II of the Limitation Act mean in accordance with the law relating to execution of decrees. Under s. 232 of the Civil Procedure Code the Court executing the decree after giving notice to the decree-holder and judgment-debtor and hearing their objections if any, has an absolute discretion to allow, or to refuse to allow, execution to proceed at the instance of a person to whom a decree has been transferred by an assignment in writing. When, therefore, a decree is transferred (really or nominally) by assignment in writing, and the ostensible transferee executes the decree with the permission of the Court, the proceedings taken and the application on which they are based are in accordance with law as between such transferee and the judgment-debtor, although he may be merely a *benamidar*, and such proceedings and application if made in proper time are sufficient to keep the decree alive. *Denonath Chuckerbutty* v. *Lalit Coomar Gangopadhya*, I. L. R. 9 Calc. 633, and *Gour Sundar Lahiri* v. *Hem Chunder Chowdhry*, I. L. R. 16 Calc. 355, distinguished; *Abdul Kureem* v. *Chukhun*, 5 C. L. R. 253, referred to; *Purna Chandra Roy* v. *Abhaya Chandra Roy*, 4 B. L. R. App. 40, and *Nadir Hossein* v. *Pearoo Thevildarinee*, 14 B. L. R. 425 note: 19 W. R. 255, followed. Under the circumstances application for execution by the transferee of a decree was held to be not barred under Art. 179 of Sch. II of the Limitation Act. BALKISHEN DAS *v.* BEDMATI KOER.

[I. L. R. 20 Calc. 388

8.—Art. 179.—*Application in accordance with law—Civil Procedure Code (Act XIV of* 1882), *ss.* 365, 366—*Succession Certificate Act (VII of* 1889) *s.* 4, *cl. b and (iii).*] On the 10th January 1890, the heirs of a deceased decree-holder (who herself had last applied for execution on the 19th March 1887) made an application for execution of a decree asking for the arrest of the judgment-debtor. At the time of this application the heirs had neither taken out a certificate under Act VII of 1889, nor had they applied for substitution of their names on the record. The Munsif directed the applicants to obtain a certificate, and on their failing to do so, he rejected their application for execution on the 21st January 1890. On the 13th September 1890 the heirs having obtained a certificate under Act VII of 1889, but not having

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(3) NATURE OF APPLICATION—*concluded.*

(*a*) GENERALLY—*concluded.*

substituted their names on the record, applied for execution against the properties of the judgment-debtor:—*Held*, that the application of the 10th January 1890 was one made in accordance with law, within the meaning of Art. 179, cl 4 of the Limitation Act, and that therefore the application of the 13th September 1890 was not barred, HAFIZUDDIN CHOWDHRY *v.* ABDOOL AZIZ

[I. L. R. 20 Calc. 755

(*b*) IRREGULAR AND DEFECTIVE APPLICATIONS.

9.—Art. 179.—*Application "in accordance with law"—Civil Procedure Code, s.* 341—*Transfer of Property Act (Act IV of* 1882), *s.* 99.] The expression "applying in accordance with law" in Act XV of 1877, Sch II, Art. 179 (4), means applying to the Court to do something in execution which by law that Court is competent to do. It does not mean applying to the Court to do something which, either to the decree-holder's direct knowledge in fact, or from his presumed knowledge of the law, he must have known the Court was incompetent to do:—*Held*, therefore, that an application to have the judgment-debtor arrested in execution of decree, which was in contravention of the terms of s. 341 of the Civil Procedure Code, and an application to bring mortgaged property to sale, which was in contravention of s. 99 of the Transfer of Property Act (IV of 1882), were not applications "in accordance with law" within the meaning of Art. 179 (4) of Sch. II of the Limitation Act CHATTAR *v.* NEWAL SINGH.

[I. L. R. 12 All. 64

10.—Art. 179—*Formal defect in application for execution — Application not in accordance with s.* 235 (*f*) *of the Civil Procedure Code.*] On an application for execution of a decree, it appeared that the only previous application for execution which had been made within a period of three years had been defective, by reason of its not containing the particulars required by Civil Procedure Code, s. 235 (*f*) and had been returned for amendment, but had not been amended:—*Held*, that the present application was not barred by limitation. RAMA *v.* VARADA.

[I. L. R. 16 Mad. 142

(4) STEP IN AID OF EXECUTION.

11.—Art. 179, cl. 4.—*Application to execute decree—Application for sale of property under attachment.*] The application contemplated by Art. 179 of Sch. II of the Limitation Act, and described as "an application for the execution of a decree or order of any Civil Court, &c., &c," is an application within the terms of s. 235 of the Civil Procedure Code, that is to say, an application setting the Court in motion to execute a decree in any manner set out in the last column of the form prescribed; but, having so set the Court in motion, any further application, during the continuance of the same proceeding, is an application to take

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(4) STEP IN AID OF EXECUTION—*continued.*

some step in aid of execution within the terms of cl. 4 in the last column of Art. 179 of the Limitation Act. An application, therefore, for the sale of property under attachment, is an application merely in aid of an execution then proceeding. CHOWDHRY PAROOSH RAM DAS *v.* KALI PUDDO BANERJEE.

[I. L. R. 17 Calc. 53

12.—Art. 179, cl. 4.—*Suit to set aside order in a claim case – Execution of decree—Application in continuation of a previous application for execution.*] Clause 4, Art. 179, Sch. II of the Limitation Act, 1877, does not include a suit to set aside an order passed in a claim case. *R* and *L* obtained a decree against *B* on the 7th March 1881, and in execution of that decree certain property belonging to *B* was attached on the 11th June 1883. Thereupon a claim was made to the attached property by third parties, and a two-thirds share therein was released by the Court executing the decree. On the 22nd March 1884 *R* and *L* instituted a suit for a declaration that the entire property was liable to be sold under their decree, and obtained a decree on the 29th March 1886. This decree was reversed by the lower Appellate Court which upheld the order releasing a two-thirds share of the property, and on 22nd July 1887 the High Court affirmed the decree of the lower Appellate Court. On the 15th August 1887 *R* and *L* applied for execution of their decree in respect of the remaining one-third share *B* objected that the application was barred:—*Held*, that the application of the 15th August 1888 was not a continuation of the application of the 11th June 1883; *Pyaroo Tukoildarinee* v. *Nazir Hossein*, 23 W. R. 133; *Issuree Dassee* v. *Abdul Khalak*, I. L. R. 4 Calc. 415; *Chandra Prodhan* v. *Gopi Mohun Shaha*, I. L. R. 14 Calc. 385; and *Paras Ram* v. *Gardner*, I. L. R. 1 All. 355, distinguished. *Held*, also, that the institution of the suit on the 22nd March 1884, and the appeal to the High Court from the decree of the lower Appellate Court, were not steps in aid of execution. *Akbar Gazee* v. *Bibee Nufeezun*, 8 W. R. 99, distinguished. RAGHUNANDUN PERSHAD *v.* BHUGOO LALL.

[I. L. R. 17 Calc. 268

13.—Art. 179, cl. 4.—*Application for execution not "in accordance with law"—Step in aid of execution—Subsequent application for execution—Objection to the previous application—Estoppel—Res judicata.*] An application for partial execution of a decree, though not "in accordance with law," is a step in aid of execution, as contemplated by cl. 4, Art. 179, Sch. II of the Limitation Act (XV of 1877). A judgment-debtor, who did not appeal against a previous order for execution of a portion of the decree, and who did not dispute the validity of such order, cannot, in the matter of a subsequent application for execution of the remaining portion of the decree, contend that the first application was not "in accordance with law," and that the subsequent application

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(4) STEP IN AID OF EXECUTION—*continued.*

being presented after the lapse of three years from the date of the decree was barred by limitation. DALICHAND BHUDAR *v.* BAI SHIVKOR.

[I. L. R. 15 Bom. 242

KALIDAS MANCHAND *v.* VARJIVAN RANGJI.

[I. L. R. 15 Bom. 245

14.—Art. 179, cl. 4.—*Verbal application for the sale of attached property.*] An application to the Court to order the sale of property which has been attached, is an application to take some steps in aid of execution; and as the Civil Procedure Code does not require a formal application, it is immaterial whether the application be a verbal one or in writing. *Ambica Pershad Singh* v. *Surdhari Lal*, I. L. R. 10 Calc. 851, followed. MANEKLAL JAGJIVAN *v.* NASIA RADDHA.

[I. L. R. 15 Bom. 405

15.—Art. 179, cl. 4.—*Application by decree-holder under Civil Procedure Code, s 258, to enter up payment made under decree.*] The expression "step in aid of execution" in Act XV of 1877, Sch. II, Art. 179, cl. 4, was intended to cover any application made according to law in furtherance of the execution-proceedings under a decree. It includes applications made by a decree-holder under s. 258 of the Civil Procedure Code to enter up part satisfaction of the decree. *Per* MAHMOOD, J.—Provided that the payment asserted in the application was actually made. SUJAN SINGH *v.* HIRA SINGH.

[I. L. R. 12 All. 399

16.—Art. 179, cl. 4.—*Application by transferee of decree for sale of hypothecated property—Non-registration of deed of assignment—Civil Procedure Code, s.* 232.] On the 13th November 1886 the assignee of a decree for sale, of hypothecated property applied, under s. 232 of the Civil Procedure Code, for execution of the decree, but, objection being raised that the deed of assignment had not been registered, subsequently applied for the return of the deed that it might be registered, and it was returned accordingly. The deed was afterwards duly registered. The next application for execution of the decree was made on the 25th April 1888:—*Held* (i) that the deed of assignment was not a document which comprised immoveable property within the meaning of s. 49 of the Registration Act (III of 1877), a decree for sale not being immoveable property as defined in s. 3; (ii) that consequently, although the assignee might not, under the latter portion of s. 49, use the deed for the purpose of proving his title, there was no provision in the Act saying that he should not take title under the deed; (iii) that the position of the assignee when he made his application on the 10th November 1886 was that he was unable to prove that there was a title by assignment in himself; (iv) that the subsequent registration cured the absence of registration on the 13th November 1886, and under

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(4) STEP IN AID OF EXECUTION—*continued.*

s. 47 of the Registration Act, the document thereupon had full effect, and related back to its execution; (v) that the application of the 13th November 1886 was a step in aid of execution of the decree within the meaning of Art. 179, cl. 4 of Sch. II of the Limitation Act (XV of 1877), and that the application of the 25th April 1888 was within time. ABDUL MAJID *v.* MUHAMMAD FAIZULLAH.

[I. L. R. 13 All. 89

17.—Art. 179, cl. 4.—*Civil Procedure Code, s.* 206—*Application to bring decree into conformity with judgment.*] The granting of an application under s. 206 of the Civil Procedure Code to bring a decree into conformity with the judgment does not form the starting point of a fresh period of limitation in favour of the decree-holder; nor is such an application "a step in aid of execution" within the meaning of Art. 179, Sch. II of the Limitation Act (XV of 1877). *Kishen Sahai* v. *The Collector of Allahabad*, I. L. R. 4 All. 137, distinguished. KALLU RAI *v.* FAHIMAN.

[I. L. R. 13 All. 124

18.—Art. 179, cl. 4.—*Application by decree-holder for leave to bid at sale.*] The making of an application by the decree-holder for leave to bid at the sale in execution of his decree is "a step in aid of execution" within the meaning of cl. 4, Art. 179, Sch. II of the Limitation Act (XV of 1877). BANSI *v.* SIKREE MAL.

[I. L. R. 13 All. 211

19.—Art. 179, cl. 4.—*Application dismissed for non-payment of process-fees.*] A decree was passed in 1884 against the Valiya Rajah of Chirakal Kovilagom, since deceased. In 1886 the decree-holder made an application in execution for the attachment of a judgment-debt, but he did not pay the process charges, and the application was dismissed on that ground:—*Held*, that that application was a step in aid of execution within the meaning of Limitation Act, Sch. II, Art. 179. KERALA VARMA VALIYA RAJAH *v.* SHANGARAM.

[I. L. R. 16 Mad. 452

20.—Art. 179, cl. 4.—*Application for transmission of decree.*] On the 2nd March 1887 *S* obtained a mortgage-decree against *P* in the Court of the Munsif of Hajipore. On the 9th September 1887 *S* applied for execution, and on the 7th November 1887 the mortgaged property was sold by the Hajipore Court. On appeal, on the 2nd September 1890, the High Court set aside the sale on the ground of want of jurisdiction. Thereupon, on the 6th September 1890, *S* applied to the Hajipore Court to transfer the decree for execution to the Munsif's Court at Muzaffarpore. On the 19th December 1890 *S* applied for execution to the Muzaffarpore Court. *L*, who had meanwhile purchased the mortgaged property from *P*, objected that the application was barred:—*Held*, that the application was not barred, as the application of the 6th September 1890 was a step in aid of execution. *Nilmony Singh Deo* v. *Bireswur Banerjee*, I. L. R. 16 Calc. 744, distinguished; *Latchman Pundeh* v. *Maddan Mohun Shye*, I. L. R. 6 Calc. 513, referred to. RAJBULLUBH SAHAI *v.* JOY KISHEN PERSHAD *alias* JOY LAL.

[I. L. R. 20 Calc. 29

21.—Art. 179, cl. 4.—*Application by decree-holder to release portion of property from attachment and have case struck off the file.*] In execution of a decree certain property was attached, and the sale-proclamation issued and served. Prior to the sale the decree-holder applied to the Court executing the decree to release a portion of the property from attachment, and stating that he had at the request of the judgment-debtor decided not to proceed with the sale asked that the sale might be postponed, and the case struck off the file, the attachment, so far as the remainder of the property was concerned, being maintained. The application was acceded to and the case struck off the file. On a subsequent application to execute the decree, *held*, that the above application was not an application to take some step in aid of execution of the decree within the meaning of cl 4, Art. 179 of Sch. II of the Limitation Act of 1877, as it had rather the effect of temporarily retarding the execution, and that the application to continue the attachment under the circumstances of the case, even supposing it to have been a substantive application apart from the other prayers coupled with it, had merely the effect of leaving things precisely where they were, and did not advance the execution in any respect whatsoever. ABDUL HOSSEIN *v.* FAZILUN.

[I. L. R. 20 Calc. 255

22.—Art. 179, cl. 4.—*Application to record certificate of payment by judgment-debtor in part satisfaction—Civil Procedure Code, s.* 258] An application made by some of the judgment-debtors (and signed by the decree-holder) to have certain payments, which were made out of Court, certified under s. 258 of the Civil Procedure Code, and that time be allowed to pay the balance of the decree, the attachment put upon their property continuing, is "a step in aid of execution" such as will keep the decree alive within the meaning of the Limitation Act, Art. 179, cl. 4. WASI IMAM *v.* POONIT SINGH.

[I. L. R. 20 Calc. 696

23.—Art. 179, cl. 4.—*Application by decree-holder for rejection of petition of judgment-debtor objecting to sale, and for confirmation of sale.*] An application by a decree-holder, praying that a petition of the judgment-debtor to set aside the sale of property belonging to him should be rejected and the sale be confirmed, is an application falling within the meaning of Art. 179, cl. 4, of Sch. II of the Limitation Act XV of 1877. An application for execution of the decree made within three years from such a former application

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(4) STEP IN AID OF EXECUTION—*concluded.*

is not barred. *Kewal Ram* v *Khadim Husain*, I. L. R 5 All. 576, followed. GOBIND PERSHAD *alias* GOBIND LAL *v.* RUNG LAL.

[I. L. R. 21 Calc. 23

(5) NOTICE OF EXECUTION.

24.—Art. 179, cl. 5.—*Civil Procedure Code*, 1882, *s.* 248—*Notice of valid or invalid application.*] The issuing of a notice under s. 248 of the Code of Civil Procedure gives a fresh starting point for limitation under Art. 179, cl. 5 of Sch. II of the Limitation Act, 1877, whether such notice is issued on a valid or on an invalid application for execution. DHONKAL SINGH *v.* PHAKKAR SINGH.

[I. L. R. 15 All. 84

(6) ORDER FOR PAYMENT AT SPECIFIED DATE.

25.—Art. 179, cl. 6.—*Decree for periodical payments.*] If it can be gathered from a decree that payments are directed to be made on dates or at periods which are sufficiently indicated by the terms of the decree the requirement of Limitation Act, Sch. II. Art. 179, cl. 6, are satisfied. KAVERI *v.* VENKAMMA.

[I. L. R. 14 Mad. 396

26.—Art. 179. cl. 6.—*Decree payable by instalments—Waiver by decree-holder—Payment out of Court Civil Procedure Code, s.* 258.] An application for execution of a decree payable by instalments was resisted by the judgment-debtor as barred by limitation on the ground that nothing had been paid under the decree, and that the application was made more than three years after the first instalment fell due. The decree-holder pleaded that he had waived the default in payment of the first instalment by accepting such payment shortly afterwards, and that the application was in time, having been made within three years from the date when the second instalment was due:—*Held*, that the decree-holder could not raise this plea, as the payment in question had not been certified to the Court executing the decree, and therefore could not, under s 258 of the Civil Procedure Code, be recognized. *Sham Lal* v. *Kanahia Lal*, I. L. R. 4 All. 316, and *Zahur Husain* v. *Bakhtawar*, I. L. R. 7 All. 317, not followed. MITTHU LAL *v.* KHAIRATI LAL.

[I. L. R. 12 All. 569

27.—Art. 179, cl 6.—*Decree for redemption—Decree not specifying result of non-payment of mortgage debt within the time prescribed thereby for payment.*] Where a decree for redemption of a mortgage stated that the amount due under the mortgage should be paid within four months, but omitted to state what the result would be if the mortgage-debt was not so paid:—*Held*, that it was competent to the decree-holder to execute such a decree at any time within the period of limitation prescribed by Art. 179, Sch. II of Act XV of 1877. BANDHU BHAGAT *v.* MUHAMMAD TAQI.

[I. L. R. 14 All. 350

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(6) ORDER FOR PAYMENT AT SPECIFIED DATE—*continued.*

28.—Art. 179, cl. 6.—*Default in payment of instalments—Right of decree-holder to waive his right to execute entire decree — Waiver.*] A decree dated the 18th July 1883, which was made against *D* and *K* in terms of a *solehnamah* filed by them, directed payment by instalments in the month of Choitro (Vilaity year) each year, with a proviso that if default was made in the payment of any instalment, then, without waiting for default in other instalments, the decree-holder should be at liberty to take out execution and realise the whole amount of the *kistbandi* with interest. *D* admittedly paid the instalments due from him up to Choitro 1292 (March-April 1885) and a portion of that due in Choitro 1293 (March-April 1886), and *K* admittedly paid those due from him up to Choitro 1293 (March-April 1886), and although in the application for execution payments made subsequent to these dates were alleged by the decree-holders to have been made, both lower Courts found such payments not to have been proved. On the 1st September 1890, more than three years after the default made by *D* in Choitro 1293 (March-April 1886) and that made by *K* in Choitro 1294 (March-April 1887), the decree-holder applied for execution of the whole decree with interest after deduction of all instalments alleged by them to have been paid. On second appeal before the High Court it was contended that although the application to execute the entire decree was barred, yet as the proviso was for the benefit of the decree-holders they were competent to waive it and claim execution in respect of the instalments that fell due within three years before the date of their application for execution:—*Held*, that this was not the case made out in the Courts below; and further, that the proviso could not be said to be waived, as there had been no acceptance of payment subsequent to the first default, nor a mere abstinence on the part of the decree-holder from seeking the benefit of the proviso, but, on the contrary, there had been an affirmative act done by him showing that he did not waive the benefit of the proviso but claimed to execute the entire decree. *Mon Mohun Roy* v. *Durga Churn Goose*, I. L. R. 15 Calc. 502, referred to. BIR NARAIN PANDA *v.* DARPA NARAIN PRODHAN.

[I. L. R. 20 Calc. 74

29.—Art. 179, cl. 6.—*Decree payable by instalments—Default in payment of first instalment —Right of waiver of default—Payment not certified to Court—Civil Procedure Code (Act VIII of* 1859), *s.* 206 (*Act. XIV of* 1882), *s.* 258.] A decree dated 22nd Cheyt 1295 (18th April 1888) provided "that the defendants do pay the decretal money as per instalments given below, otherwise the plaintiff will have the power to cancel the instalments and realize the entire amount." The first instalment was made payable on 30th Cheyt 1295 (26th April 1888), and the other six instalments on the 30th of the months of Magh and Bysack in the three following years. In an application

LIMITATION ACT (XV OF 1877), Art. 179 —*continued.*

(6) ORDER FOR PAYMENT AT SPECIFIED DATE—*concluded.*

made on 9th February 1892 for execution of the decree, the decree-holder stated that only the first instalment had been paid, and asked for execution for the amount remaining due under the decree, and the judgment-debtors denied having paid any of the instalments:—*Held*, that the clause in the decree to the effect that on non-payment of an instalment by the specified date it should be in the power of the decree-holder to realize the full amount, was not intended to give him the option of waiving the default if he pleased, but that it implied nothing more than the usual condition that on non-payment of an instalment the whole decretal amount would become exigible; if, therefore, the first instalment had not been paid, the application for execution, not having been made within three years from the date when the whole amount became due, was barred by Art. 179 of Sch. II of the Limitation Act. (*Chandra Kamal Das* v. *Bissessurree Dassia*, 13 C. L. R. 243, dissented from); and the case was remanded for final decision of the question whether or not payment of the first instalment had been made. *Chenibash Shaha* v. *Sridam Mandal*, I. L. R. 5 Calc. 97; *Asmutullah Dalal* v. *Kally Churn Mitter*, I. L. R. 7 Calc. 56; *Nilmadhub Chuckerbutty* v. *Ramsodoy Ghose*, I. L. R. 9 Calc. 857; *Judistir Patro* v. *Nobin Chandra Khela*, I. L. R. 13 Calc. 73; *Ram Culpo Bhattacharji* v. *Ram Chunder Shome*. I. L. R. 14 Calc. 352; *Mon Mohun Roy* v. *Durga Churn Gooee*, I. L. R. 15 Calc. 502, and *Bir Narain Panda* v. *Darpa Narain Prodhan*. I. L. R. 20 Calc. 74, referred to. *Held*, further, that although under the provisions of s. 258 of the Civil Procedure Code the payment in question, if made, could not be recognised as a payment or adjustment of the decree, yet it was competent to the decree-holder to prove such payment for the purpose of showing that the execution of the decree was not barred. There is no material difference in this respect between s. 258 of the Civil Procedure Code (Act XIV of 1882), and s. 206 of the old Code (Act VIII of 1859) on which the case of *Fakir Chand Bose* v. *Madan Mohan Ghose*, 4 B. L. R. F. B. 130, was decided. HURBI PERSHAD CHOWDHRY *v.* NASIB SINGH.

[I. L. R. 21 Calc. 542

(7) JOINT DECREE.

(*a*) JOINT DECREE-HOLDERS.

30.—Art. 179, and ss. 7, 8.—*Civil Procedure Code*, 1882, *ss.* 231, 258—*Disability of—Minority—Execution of decree.*] A member of an undivided Hindu family and his two minor brothers (who sued by him as their next friend) brought a suit for partition of family property against their father, and joined as defendants certain persons who were in possession of part of the property under alienations made by the father but alleged in the plaint to be invalid as against the family. In 1875 a decree was passed in favour of the plaintiffs in the above suit. No application

LIMITATION ACT (XV OF 1877), Art. 179 *concluded.*

(7) JOINT DECREE—*concluded.*

(*a*) JOINT DECREE-HOLDERS—*concluded.*

for the execution of the decree was made by either the first or second plaintiff; but the third plaintiff, having attained his majority in June 1881, applied for execution in April 1884: his application was opposed by two of the defendants. The District Judge made an order granting his application in respect of the one quarter share to which he was declared to be entitled under the decree:—*Held*, that the order of the District Judge was wrong. The decree was not one "passed severally in favour of more persons than one distinguishing portions of the subject-matter as payable or deliverable to each"; and as neither s. 7 nor s. 8 of the Limitation Act was applicable to the case, the application was barred by limitation under Art. 179 of the Limitation Act. SESHAN *v.* RAJAGOPALA. RAJAGOPALA *v.* SESHAN.

[I. L. R. 13 Mad. 236

31.—Art. 179.—*Civil Procedure Code, ss.* 231, 232—*Assignment of decree by operation of law—Application for execution of decree.*] A Hindu obtained in 1878 a decree for partition of certain property and applied in 1888 to have it executed. It appeared that the decree-holder's son, having obtained against him in 1881 a decree for a share of whatever he should acquire under the decree of 1878, had applied for execution of the last-mentioned decree; and reliance was now placed on that application to save the bar of limitation:—*Held* that, assuming the decree of 1881 had effected an assignment by operation of law of the decree of 1878, the father and son were not joint decree-holders within the meaning of Civil Procedure Code, s. 231, and the father's application for execution was barred by limitation. RAMASAMI *v.* ANDA PILLAI.

[I. L. R. 13 Mad. 347

This decision was set aside on review, and it was held on the facts as then presented to the Court that the decree was not a joint decree, and that no question therefore arose as to the effect of Expl. I to Art. 179 of the Limitation Act. RAMASAMI *v.* ANDA PILLAI.

[I. L. R. 14 Mad. 252

———, Art. 180—*Execution of decree—Order of Her Majesty in Council—Revivor—Civil Procedure Code (Act XIV of 1882), ss.* 230, 248—*Res judicata.*] A decree was obtained against the judgment-debtor in the Zillah Court in 1860, which was reversed by the High Court, but was restored on appeal to Her Majesty in Council on the 22nd May 1872. This decree was assigned to the present decree-holders on the 10th April 1873. Between the 27th November 1872 and 10th April 1880 various applications for execution of the Order in Council were made, attachment processes issued, and proceedings struck off. In 1880 the decree-holders brought a suit to establish the right

LIMITATION ACT (XV OF 1877), Art. 180 —*concluded.*

of the judgment-debtor to a bond in favour of the latter for a certain sum of money, and on the 15th March 1881 they obtained a decree which was upheld by the High Court on the 20th March 1882. After this decree, between the 10th February 1883 and the 19th April 1886, a number of applications were made for execution, which were struck of. Another application was made on the 25th July 1887 for execution. On the 28th October 1887 the judgment-debtor filed an objection on the ground that the decree was barred. On the 20th December 1887 the objection was overruled and execution issued, but the proceedings were struck off on the 28th March 1888. Then, after another application had been made on the 28th September 1888, the present application was made on the 19th November 1890, when the judgment-debtor filed an objection on the ground that the decree of which execution was sought was barred by the law of limitation:—*Held*, that the decree which was sought to be enforced was an "Order of Her Majesty in Council" within the meaning of Art. 180 of the Limitation Act. *Luchmun Persad Sing* v. *Kishun Persad Sing*, I. L. R. 8 Calc. 218: 10 C. L. R. 425; and *Pitts* v *La Fontaine*, L. R. 6 App. Cas. 432, approved. Article 180 is independent of s. 230 of the Code of Civil Procedure. Section 230 has no application to decrees made by the High Court in the exercise of its ordinary original civil jurisdiction. In Art. 180, Orders in Council stand in the same category as decrees of Courts established by Royal Charter in the exercise of such jurisdiction. Execution of the decree therefore was not barred by s. 230 of the Code. *Mayabhai Prembhai* v. *Tribhurandas Jagjivandas*, I. L. R. 6 Bom. 258, and *Ganpathi* v. *Balsundara*, I. L. R. 7 Mad. 546, referred to. In Art. 180 of the Limitation Act the term 'revived' must be read in one and the same sense in connection with the High Court decrees and Orders in Council, and not distributively. Following the interpretation of revivor in *Aushootosh Dutt* v. *Doorga Charan Chatterjee*, I. L. R. 6 Calc. 504: 8 C. L. R. 23; there having been in the present case an order for execution of the decree made after notice to the judgment-debtor, there was such a revivor as prevented the execution of the decree from being barred by Art. 180. *Held*, also, that the objection of the judgment-debtor was *res judicata*. The same contention was raised in the former application and overruled by the judgment of the Subordinate Judge, dated the 20th December 1887. FUTTEH NARAIN CHOWDHRY *v.* CHUNDRABATI CHOWDHRAIN.

[I. L. R. 20 Calc. 551

LIQUIDATOR.

See CASES UNDER COMPANY—WINDING UP — DUTIES AND POWERS OF LIQUIDATORS.

See COMPANY—WINDING UP—GENERAL CASES.

[I. L. R. 15 Mad. 97

LIQUIDATOR—*concluded.*

——, Official Liquidator, assignment of lease by—

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 14 All. 176

——, Suit by—

See COMPANY — ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

[I. L. R. 17 Bom. 469, 472

LIS PENDENS.

1.—*Purchase by puisne mortgagee at sale in execution of decree of property with several mortgages on it—Purchases before and during mortgagee's suit, and after decree therein how affected by it.*] The plaintiff in this suit had succeeded to four, out of five, mortgages, subsequent to his own, which had been executed before a decree obtained by a mortgagee. This decree had been purchased by the first defendant, who also bought the property at the execution-sale. The plaintiff had also succeeded to several mortgages executed pending the suit in which the decree was made:—*Held*, that a distinction must be made in respect of whether the mortgages so transferred to the plaintiff had been executed before or after the bringing of the above suit. As regards the mortgages executed before it, the plaintiff, not having been a party to that suit, was entitled to redeem the first defendant who was purchaser of the decree. As regards the mortgages executed after that suit was brought, the plaintiff was bound by the decree, and his interest in the mortgages, transferred *pendente lite*, passed to the purchaser. On the other hand, persons who have taken transfers of property subject to a mortgage cannot be bound by proceedings in a subsequent suit, between the prior mortgagee and the mortgagor, to which they have not been made parties. UMES CHUNDER SIRCAR *v.* ZABUR FATIMA.

[I. L. R. 18 Calc 164
[L. R. 17 I. A. 201

2.—*Suit resulting in proceedings unexpected from its nature and the relief sought—Possibility of appeal—Compromise of suit*—Bonâ fide *purchaser without notice—Estoppel.*] The plaintiffs, in execution of decree against the estate of the deceased husband of *A*, attached among others certain properties as to which *A* put in a petition of objections on 11th July 1872, claiming them as her own by right of purchase from her husband in lieu of her dower, and her claim was allowed, and the properties released from attachment on 20th December 1872. Subsequently in May 1873, *A* mortgaged the properties to *R*. An appeal was preferred (but whether before or after the mortgage to *R* was not clear) against the order of 28th December 1872, and the appeal was, on 30th May 1874, settled by a compromise between the plaintiffs and *A*, by which among other conditions time was granted to *A* to pay off the decree, and a 12-anna share of the properties claimed was released from attachment, the attachment being continued

LIS PENDENS—*continued.*

against the other 4-anna share: the order of the Court was simply that "the case be struck off." The decree not being satisfied, the plaintiffs took out execution, and the properties were put up for sale and purchased by the plaintiffs on 27th November 1882. Subsequently in execution of the decree *R* held against *A*, the properties were again put up for sale and purchased by *R* on 14th November 1884. In a suit against *R* and *A* for declaration of the plaintiff's title and for possession of the properties:—*Held* that the order of the Court and the compromise in the claim suit were not such proceedings as from the nature of the suit and the relief prayed *R* could have expected would result, and that he was therefore not bound by them as a purchaser *pendente lite*. *Kailash Chandra Ghose* v. *Ful Chand Johari*. 8 B. L. R. 474, and *Kaseemunnissa Bibee* v. *Nilratna Bose*. I. L. R. 6 Calc. 79, referred to:—*Semble*.—Neither the possibility of an appeal nor the consent decree were proceedings by which *R* as a purchaser *pendente lite* would be bound. *Held* also that, under the circumstances, *R* had a good title as *bonâ fide* mortgagee and auction-purchaser without notice, and that the plaintiffs were estopped from questioning that title. *Poresh Nath Mukherji* v. *Anath Nath Deb*, I. L. R. 9 Calc 265, followed. KISHORY MOHUN ROY *v.* MAHOMED MUJAFFAR HOSSEIN.

[I. L R. 18 Calc. 188

3.—*Transfer of Property Act, s. 52—Mortgage.*] Of the three owners of certain properties, two executed a mortgage of their interest in December 1872. In 1879 a creditor of the three obtained a money-decree against them, and, in execution, attached, *inter alia*, the properties subject to the mortgage. In July 1880 the mortgagee intervened in execution, and an order having been made directing that the property be sold subject to his mortgage lien, filed a suit upon his mortgage. The property was brought to sale in execution of the money-decree in November 1880, and the defendant became the purchaser. The mortgagee obtained a decree in the following February, and the mortgaged property was sold in execution in March 1884 and was purchased by one who assigned his interest to the plaintiff:—*Held*, that the defendant's purchase was subject to the doctrine of *lis pendens*. KUNHI UMAH *v.* AMED.

[I. L. R. 14 Mad. 491

4.—*Transfer of Property Act, ss. 52, 53—Contribution, suit for.*] Two properties, *A* and *B*, belonging to different owners, were mortgaged under a joint bond for the same debt. The mortgagee put his bond in suit, and, having obtained a decree, caused property *A* to be sold, the proceeds of which proved more than sufficient to satisfy the whole mortgage-debt. Before such sale, however, *X* had, in execution of a simple money-decree, acquired a share in property *A*. *X* accordingly sued for contribution from property *B*, in that, so far as his share in property *A* went, he had satisfied the mortgage-debt, and ultimately obtained a decree in his favour; but, during the pendency of that litigation, property *B* had been transferred

LIS PENDENS—*concluded.*

to *Y*:—*Held*, that *Y* must take the property subject to *X*'s right to contribution from it in respect of the loss of his share in property *A*. BALDEO SAHAI *v.* BAIJ NATH.

[I. L R. 13 All. 371

LIST OF CANDIDATES AT MUNICIPAL ELECTION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s 31.

[I. L. R. 19 Calc. 192 195, note, 198

LOAN.

See CONTRACT—CONDITIONS PRECEDENT.

[I. L. R. 14 Bom. 498

LOCAL GOVERNMENT.

——, Order of—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.

[I. L R 13 Mad. 78

See BENCH OF MAGISTRATES.

[I. L. R. 16 Mad. 410

[I. L. R. 20 Calc. 870

——, Rules made by.

See RULES MADE UNDER ACTS.

[I L R 15 Bom. 322

[I. L. R. 12 All. 564

LOCAL INVESTIGATION.

See SPECIAL APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—LOCAL INVESTIGATION.

[I. L. R. 21 Calc. 504

—*Civil Procedure Code, s. 392—Reference to a Commissioner.*] The local investigation referred to in Civil Procedure Code, s 392, presupposes the existence on the record of independent evidence which requires to be elucidated, and that section does not authorize a Court to delegate to a Commissioner the trial of any material issue which it is bound to try. SANGILI *v.* MOOKAN.

[I. L. R. 16 Mad. 350

LUNATIC.

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS.

[I. L. R. 15 Bom. 177

1.—*Suit by an unadjudged lunatic by the Agent of the Court of Wards as guardian—Authority of the Court of Wards—Madras Regulation V of 1804—Estates of lunatics subject to Mofussil Courts—Act XXXV of 1858—Code of Civil Procedure, s. 464.*] A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons, and died. The plaintiff, a female, was the sole surviving member of the testator's

LUNATIC—*continued.*

family, but it was admitted that she was, and for more than fifty years had been, a lunatic, though she had not been declared to be so under Act XXXV of 1858: it appeared that her lunacy was not congenital. She sued, by the Collector of South Canara, the Agent for the Court of Wards:—*Held* (1) that the plaintiff was not excluded from inheritance by reason of lunacy under Aliyasantana law, and the will, in favour of the defendants, was invalid; (2) that the Court of Wards had power to take cognizance of the plaintiff's case under Madras Regulation V of 1804; (3) that although the Court of Wards should ordinarily obtain a declaration under Act XXXV of 1858 in cases where the lunacy of a ward is open to question, their failure to do so in the present case was not fatal to the suit: (4) that Civil Procedure Code, s. 464, was accordingly applicable to the case; (5) that the appointment of the Collector, as guardian to the plaintiff, was legal and valid. In deciding what was the extent of the property which the plaintiff was entitled to inherit under the above rulings, certain documents adduced as evidencing partition of the family property were held to evidence merely arrangements for separate enjoyment. SANKU *v.* PUTTAMMA.

[I. L. R. 14 Mad. 289

2.—*Defendant a lunatic but not adjudicated a lunatic—Code of Civil Procedure (Act XIV of* 1882) *ss.* 443, 463—*Act XXXV of* 1858—*Practice—Appointment of a guardian ad litem by the Court.*] Although s. 443 of the Code of Civil Procedure (Act XIV of 1882) read with s. 463 does not oblige a Court to appoint a guardian *ad litem* for a defendant of unsound mind, except where he has been adjudged to be of unsound mind under Act XXXV of 1858; still upon general principles and in conformity with the practice of the Court of Chancery, the Court should assign a guardian *ad litem* for the defendant if it finds, on inquiry, that he is of unsound mind so as to be unfit to defend the suit. VENKATRAMANA RAMBHAT *v.* TIMAPPA DEVAPPA.

[I. L. R. 16 Bom. 132

3. *Act XXXV of* 1858, *ss.* 2, 7, 9, 10, 23—*Guardian of lunatic—"The legal heir"—Wife of lunatic—Mahomedan law—Shia sect.*] One *M S*, a Shia Mahomedan, was formally adjudged a lunatic under the provisions of Act XXXV of 1858. At the time of this adjudication *M S* had a wife, *Z*, who had had one child by him, but that child had died previously to *M S* being adjudged a lunatic; it did not, however, appear that there was any reason precluding the possibility of further issue of the marriage:—*Held* by MAHMOOD, J., that under the law applicable to the Shia sect of Mahomedans *Z* was one of the "legal heirs" of *M S* within the meaning of s. 10 of Act XXXV of 1858, and as such was excluded by the terms of the proviso to that section from being appointed guardian of the person of her lunatic husband. In cases under the Lunacy Act (XXXV of 1858) the High Court as a Court of Appeal will not take upon itself the duty of deciding who may be the fittest person to appoint

LUNATIC—*concluded.*

as guardian of the person or property of a person adjudged a lunatic there-under. That duty should rest with the Courts to which it is entrusted by the Act:—*Held* by KNOX, J., that upon the general circumstances of the case the wife was not a fit person to be appointed as guardian of the lunatic: *sed quære* whether she was, within the meaning of s. 10 of Act XXXV of 1858, "the legal heir" of the lunatic, and therefore statutorily disqualified. FAZL RAB *v.* KHATUN BIBI.

[I. L. R. 15 All. 29

MADRAS ABKARI ACT (MADRAS ACT III OF 1864).

——, s. 6.

See DAMAGES — SUITS FOR DAMAGES—BREACH OF CONTRACT.

[I. L. R. 14 Mad. 82

MADRAS ABKARI ACT (MADRAS ACT I OF 1866).

——, s. 28.

See ATTACHMENT—ALIENATION DURING ATTACHMENT.

[I. L. R. 16 Mad. 479

MADRAS ACT, 1862—IV.

See GRANT — RESUMPTION OR REVOCATION OF GRANT.

[I. L. R. 14 Mad. 431

——, 1864—II.

See MADRAS REVENUE RECOVERY ACT, 1864.

——, 1864—III.

See MADRAS ABKARI ACT (III OF 1864).

——, 1865—VII, s. 4.

See MADRAS RENT RECOVERY ACT, s. 11.

[I. L. R. 15 Mad. 47

——, 1865—VIII.

See MADRAS RENT RECOVERY ACT.

——, 1866—I.

See MADRAS ABKARI ACT (I OF 1866).

——, 1871—III.

See MADRAS TOWNS IMPROVEMENT ACT, 1871.

——, 1873—III.

See MADRAS CIVIL COURTS ACT, 1873.

——, 1882—V.

See MADRAS FOREST ACT.

——, 1884—I.

See MADRAS MUNICIPAL ACT.

MADRAS ACT—*concluded.*

——, 1884—IV.

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884.

——, 1884—V.

See MADRAS LOCAL BOARDS ACT.

——, 1887—I.

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[I. L. R. 13 Mad. 454, 502

——, 1888—III.

See MADRAS POLICE ACT, 1888.

——, 1889—I.

See MADRAS VILLAGE COURTS ACT, 1889.

MADRAS CIVIL COURTS ACT (MADRAS ACT III OF 1873).

——, s. 12.

See VALUATION OF SUIT—APPEALS.

[I. L. R. 15 Mad. 69

See VALUATION OF SUIT— SUITS.

[I. L. R. 13 Mad. 56

[I. L. R. 14 Mad. 183

[I. L. R. 15 Mad. 69, 501

——, s. 13.

See VALUATION OF SUIT—APPEALS.

[I. L. R. 13 Mad. 520

[I. L. R. 14 Mad. 462

[I. L. R. 16 Mad. 326

See VALUATION OF SUIT—SUITS.

[I. L. R. 14 Mad. 78

——, s. 14.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[I. L. R. 15 Mad. 237

See VALUATION OF SUIT—SUITS.

[I. L. R. 13 Mad. 56

[I. L. R. 16 Mad. 328

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884).

——s. 41.

See PUBLIC SERVANT.

[I. L. R. 13 Mad. 131

——, ss. 49, 50.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MUNICIPAL TAX.

[I. L. R. 13 Mad. 78

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884)—*contd.*

1.—s. 53, and ss. 55 and 60.—*Wrongful assessment of profession tax.*] The Municipality at Tuticorin demanded Rs 50 as profession tax from the South Indian Railway Company which had already paid profession tax to the Municipality at Negapatam. The Company complied with the demand under protest and sued the Municipality for a refund of the amount paid and obtained a decree:—*Held*, the Municipality at Tuticorin had no right to levy the tax on the Railway Company as the Company had already paid it once, and the decree directing the amount levied to be refunded was correct. MUNICIPAL COUNCIL OF TUTICORIN *v.* SOUTH INDIAN RAILWAY CO.

[I. L. R. 13 Mad. 78

2.—s. 53, and ss. 55 and 60.—*Profession tax.*] The Bank of Madras carried on business at (among other places) Negapatam and Tellicherry, in both of which places the Madras District Municipalities Act was in force. The Bank paid profession tax under that Act to the Municipality of Negapatam two days before it was due. The Municipality of Tellicherry subsequently, and with knowledge of the above facts, assessed the Bank to the same tax for the same period and levied the amount which was paid under protest:—*Held*, that the Bank was entitled to recover the amount so paid, from the Municipality of Tellicherry. *Semble*:—The aggregate income derived by the Bank from the exercise of its business in the separate Municipalities should regulate the class under which it would be liable to taxation. MUNICIPAL COUNCIL OF TELLICHERRY *v.* BANK OF MADRAS.

[I. L. R. 15 Mad. 153

1—s. 103.—*Attachment of moveable property—Doors of house.*] The doors of a house are not attachable as moveable property under the Madras, District Municipalities Act s. 103. QUEEN-EMPRESS *v.* IBRAHIM.

[I. L. R. 13 Mad. 518

2.—s. 103, and s. 110.—*Doors of house—Distraint notice.*] A Municipal Council under the District Municipalities Act has, under s. 110, a power to distrain after due notice, besides that given by s. 103, but the property distrained must be that of the defaulter, and the doors of a house cannot be removed in execution of a warrant of distress. PURUSHOTTAMA *v.* MUNICIPAL COUNCIL OF BELLARY.

[I. L. R. 14 Mad. 467

——, s. 110.

See s. 103.

[I. L. R. 14 Mad. 467

——, s. 169.—*Suit for declaration of title against a Municipality.*] The plaintiff sued a Municipal Council, under the Madras District Municipalities Act, for a declaration of title to a certain structure situated in the limits of the Municipality and of his right to put a roof over it. The structure was found to belong to the

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884), s. 169 —*concluded.*

plaintiff:—*Held*, that the Municipal Council had no discretion under s. 169 of the above Act to prevent the plaintiff from dealing with the structure, provided he did not interfere with the convenience of the public or with any sanitary regulations. KRISHNAYYA *v.* BELLARY MUNICIPAL COUNCIL.

[I. L. R. 15 Mad. 292

———, s. 180, and s. 264.—*Municipal building license—Building in excess of license—Requisition to demolish building—Magistrate, jurisdiction of.*] A landowner in a Municipality, subject to Madras Act IV of 1884, applied for a building license under s. 180 of the Act. The Municipality having resolved that a portion of the land was required for widening a public lane, ordered the applicant to abstain from building on it, and granted a license for a building to be erected on the remaining portion. The landowner, however, erected a building upon the whole of the land. The Municipal Council then called upon her to demolish the building erected on the portion of the land which had not been licensed. This notice was not complied with. The landowner was then prosecuted and convicted under ss. 180, 263 and 264 of the Act:—*Held*, that neither of the above-mentioned orders of the Municipal Council were legal, and consequently that no offence had been committed by the landowner. *Semble.*—Madras Act IV of 1884, s. 264, does not empower a Magistrate to impose a fine prospectively in respect of the period during which a person convicted of the offence of omitting to comply with a notice to execute any work, may continue to leave such work unexecuted. QUEEN-EMPRESS *v.* VEERAMMAL.

[I. L. R. 16 Mad. 230

———, s. 222.—*Nuisance—Sewage water.*] An occupier of a building who allows sewage water to run into a street within the limits of a Municipality, governed by the Madras District Municipalities Act, commits an offence under s. 222 of that Act, although the Municipality may have supplied no side drains in the street in question. QUEEN-EMPRESS *v.* SEVUDAPPAYYAR.

[I. L. R. 15 Mad. 91

———, s. 261.—*Limitation—Contract Act (IX of 1872), s. 74—Penalty.*] The council of a Municipality, under Madras Act IV of 1884, entered into a contract for the lighting of the town whereby it was provided that the deposit made by the contractor should be forfeited on any default made by him in carrying out the terms of the contract. One holding a decree against the contractor attached the amount of the deposit in the hands of the municipal council, but the council subsequently passed a resolution in July 1888 declaring that the amount of the deposit had been forfeited. The decree-holder having purchased from the contractor his right to the money in question sued in 1890 to recover it from the Municipality:—*Held* (1) that the suit was not barred by the rule of limitation in the Madras District Municipalities Act. s. 261; (2) that the provision for forfeiture in the contract was penal and unenforceable, and consequently that the resolution of July 1888 was *ultra vires.* SRINIVASA *v.* RATHNASABAPATHI.

[I. L. R. 16 Mad. 474

MADRAS DISTRICT MUNICIPALITIES ACT (MADRAS ACT IV OF 1884), s. 261 *concluded.*

MADRAS FOREST ACT (MADRAS ACT V OF 1882).

———, s. 2, and ss. 3, 4, 6, 8, 9, 50.—*Destroying cairn erected by Forest Department.*] The accused, who were servants of the *shrotriemdar* of an *agraharam*, destroyed a cairn erected by the Forest Department on the *shrotriem* land along the boundary line of a proposed forest reserve. No notice under Forest Act, s. 6, was proved to have been served on the *shrotriemdar*, and it did not appear whether the land in question was comprised in the boundaries specified in the notification published under s. 4. The accused were convicted under s 50 (*d*):—*Held* (1) that the provisions of the Act did not apply to the *shrotriem* land; (2) that the right of a forest officer to enter upon and demarcate land under s. 9 is limited to the purpose of the inquiry directed by s. 8; (3) that the conviction was wrong. QUEEN-EMPRESS *v.* JANGAM REDDI.

[I. L. R. 14 Mad. 247

———, s. 6.

See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.

[I. L. R. 15 Mad. 315

———, s. 21 (d)—*Grazing cattle in a forest reserve.*] The owner of cattle found grazing in a forest reserve cannot be convicted under Madras Forest Act. s. 21 (*d*), in the absence of evidence that he either pastured the cattle or permitted them to trespass in the reserve. QUEEN-EMPRESS *v.* KRISHNAYYAN.

[I. L. R. 15 Mad. 156

———, 26.—*Cutting trees without permit—Canara Forest Rules, Nos.* 7, 12, 23.] The accused, not having a permit, cut certain classified trees on the *kumaki* adjoining his land and used the wood in his still as fuel; and upon these facts he was convicted of an offence against rules 7, 12 and 23:—*Held*, that the conviction was illegal. QUEEN-EMPRESS *v.* SHEREGAR.

[I. L. R. 13 Mad. 21

———, s. 33.—"*Jointly interested*"—*Possession of forest under a mortgage*] The Government having possession of a forest under a mortgage is jointly interested therein with the mortgagor within the meaning of the Madras Forest Act, s. 33. ASHTAMURTHI *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 13 Mad. 322

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884).

1.—s. 27, and ss. 128, 156.—*Suit against Taluk Board—Suit framed erroneously—Plaint, frame of—Compensation for wrongful acts committed under the Act—Special period of limitation.*] In a suit brought against, among others, the President of a Taluk Board constituted under Local Boards Act, 1884 (Madras), to recover land on which the *panchayat* of a Union within the *taluk* had erected a public latrine, it was pleaded that the suit, as against the above-mentioned defendant, was wrongly framed, and also that it was barred by the special rule of limitation contained in s. 156 of that Act. The plaintiff asked for no amendment, but proceeded to trial:—*Held*, that the suit was not maintainable under the Madras, Local Boards Act 1884, s. 27, on the ground that it was not brought against the Taluk Board. *Quære*—Whether s. 156 is applicable to suits other than suits for compensation for wrongful acts committed under colour of the Act. AMEER SAHIB *v.* VENKATARAMA.

[I. L. R. 16 Mad. 296

2.—s. 27, and s. 156.—*Notice of action—Form of suit—Plaint, frame of—Injunction against Taluk Board.*] The plaintiff built a wall on his land situate within the limits of the Sivaganga Taluk Board. The Local Board called upon him to remove the wall as constituting an obstruction, and gave him notice that in default of his doing so it would be demolished by the authorities. The plaintiff now brought a suit against the President of the Taluk Board and the Chairman of the Union, within the limits of which the land was situated, for an injunction restraining the defendants from interfering with the wall. No notice of action was given under the Local Boards Act, s. 156. In the Courts of First Instance and First Appeal no objection was taken to the frame of the suit with reference to the provisions of s. 27:—*Held* (1) that the defendants should not be permitted on second appeal to raise such objection to the frame of the suit; (2) that previous notice of action under s. 156 was not necessary. PRESIDENT, TALUK BOARD, SIVAGANGA *v.* NARAYANAN.

[I. L. R. 16 Mad. 317

——, s. 128, and s. 156.—*Suit for malicious prosecution against officers of panchayat union—Limitation.*] A suit was brought against the chairman and accountant of a *panchayat* union for damages for malicious prosecution more than six months after the close of the criminal proceedings, and it was contended for the defendants that the suit should have (under s. 128 of the Local Boards Act) been brought against the Taluk Board, and that the suit was not instituted within six months of the accrual of the cause of action as required by s. 156 of the same Act:—*Held* (1) that the defendants were liable for torts committed by them, and that notwithstanding the Local Boards Act, s. 128, the plaintiff was not confined to his remedy against the Taluk Board; (2) that the Local Boards Act, s. 156, was not applicable unless it were proved that the Act complained of was done by servants of the Taluk Board within the scope of their authority as such, acting or purporting to act under the Act. ANNAJI *v.* SUBRAMANYA.

[I. L. R. 13 Mad. 442

MADRAS LOCAL BOARDS ACT (MADRAS ACT V OF 1884), s. 128—*concluded.*

MADRAS MUNICIPAL ACT (I OF 1884).

——s. 103, and ss. 190, 192.—*Profession tax—Liability of members of a firm—Extent of appeal allowed against decision of President of Municipality—Magistrate, jurisdiction of.*] A member of a firm in Madras, another member of which was absent, was assessed under the Madras Municipality Act to pay a certain sum for the tax on arts, professions, trades and callings as agents in charge of the business of the absent member of the firm. He complained to the President against the assessment under ss. 104, 190 of the Act on the ground that he was not liable to pay any tax as agent, &c., but the assessment was confirmed. He thereupon preferred an appeal to the Magistrates:—*Held* (1) that the Magistrates had jurisdiction under Madras Municipal Act, s. 192, to decide the question of the liability of the appellant to be taxed under s. 103; (2) that although the absent partner might be called upon through the appellant as his agent to pay the tax due by the firm with reference to its whole income, he was not otherwise chargeable with any tax in respect of the business carried on by him. DAVIES *v.* PRESIDENT OF THE MADRAS MUNICIPAL COMMISSION.

[I. L. R. 14 Mad. 140

——, ss. 190, 192.

See s. 103.

[I. L. R. 14 Mad. 140

——, s. 433.—*Statement of cause of action—Address of intending plaintiff—Sufficiency of notice of action.*] In a suit against the Municipal Commissioners of the City of Madras for damages sustained by the plaintiff by reason of an accident occasioned to his horses through the ill-repair of a road within the limits of the Municipality, it appeared that at the close of a correspondence between the plaintiff and the President of the Municipality, the plaintiff, in a letter headed "Madras," stated that he had directed auctioneers to sell the horses, and that he would "proceed against you by law to recover such loss or damage as I may have sustained," and added "kindly consider this as notice of claim under s. 433 of Municipal Act (I of 1884)," and that the plaintiff's attorneys, in a subsequent letter, demanded payment of Rs. 1,000, "being the damages sustained by our client by reason of the neglect to keep in proper repair that portion of the road, &c.," and stated that if the sum claimed were not paid, the plaintiff would be "compelled to have recourse to law to recover the same without further notice":—*Held* (1) that the two letters should be read together; (2) that the cause of action was stated sufficiently in the second of the above letters; (3) that the plaintiff's address was sufficiently given in the first of the above letters.

MADRAS MUNICIPAL ACT (I OF 1884), s. 433—*concluded.*

There was therefore a sufficient notice of action under s. 433 of the Madras Municipal Act, 1884. EALES *v.* MUNICIPAL COMMISSIONERS OF MADRAS.

[I. L. R. 14 Mad. 386

MADRAS POLICE ACT (XXIV OF 1859), s. 48.

See BENCH OF MAGISTRATES.

[I. L. R. 13 Mad. 142

See MAGISTRATE JURISDICTION OF — TRANSFER OF MAGISTRATE DURING TRIAL.

[I. L. R. 15 Mad. 132

MADRAS POLICE ACT (MADRAS ACT III OF 1888.)

———, s. 71, cls. 11 and 15.—*Crowd collected by music—Obstruction of street—Music performed in private place.*] Members of the Salvation Army were found by the Magistrate to have played tambourines and sung "at the angle" of a street in Madras, and thereby collected a crowd which thronged the street, and they were convicted of offences under the City of Madras Police Act, s. 71, cls. 11 and 15:—*Held*, on revision, that, since the intention of the accused was to collect a crowd in the street, the conviction under cl. 11 was right, whether or not the place, where the accused played and sang, was a private place; but that, if it was a private place, the conviction under cl. 15 was wrong. QUEEN-EMPRESS *v.* SUKA SINGH.

[I. L. R. 14 Mad. 223

MADRAS REGULATION.

———, 1802—II, s. 18.

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.

[I. L. R. 13 Mad. 467

———, 1802—XXV.

See HINDU LAW — INHERITANCE — IMPARTIBLE PROPERTY.

[I. L. R. 13 Mad. 406

———, s. 12.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

[I. L. R. 16 Mad. 479

———, 1802—XXV.

———, ss. 4, 12.—*Zemindar's sanad, assets mentioned in—Quit-rent on an agraharam village—Inam title-deed, rate mentioned in—Joint liability of agraharamdars—Rent, rate of.*] The plaintiff was a zemindar holding his estate under a *sanad* dated 1802. This *sanad* followed almost *verbatim* the language of Regulation XXV of 1802, s. 4, and where it referred to "lands paying a small quit-rent," added "which quit-rent unchangeable by you is included in the assets of your zemindari."

MADRAS REGULATION, s. 4, —*concld.*

The suit was brought to recover arrears of *jodi* or quit-rent accrued due on an *agraharam* village in the zemindari. The defendants, who were the *agraharamdars*, had divided the village and held it in separate shares. They pleaded that they were not liable to pay *jodi* in excess of the rate fixed by the Inam Commissioner and specified in the *inam* title-deed granted by him for the village in 1869:—*Held* (1) that the decision of the Inam Commissioner did not affect the zemindar's claim, and that the question to be determined was what was the *jodi* payable in respect of the village at the time of the permanent settlement on which the *peishcush* of the zemindari was fixed; (2) that the defendants were jointly and severally liable for the amount that should be found due to the zemindar. On its appearing that Rs. 6 per *putti* was the recognised rate from 1832 to 1879, and that there was no evidence to show the *agraharamdars* had ever paid any other rate, or had paid Rs. 6 under coercion, the Court presumed that that was the rate at the time of the permanent settlement. SOBHANADRI APPA RAU *v.* GOPALKRISTNAMMA.

[I. L. R. 16 Mad. 34

———, 1802—XXIX, s. 12.

See PUBLIC SERVANT.

[I. L. R. 15 Mad. 127

———, 1802—XXXII.

See PANCHAYAT.

[I. L. R. 15 Mad. 1

———, 1803—II, s. 44.

See LAND ACQUISITION ACT, s. 11.

[I. L. R. 3 Mad. 485

———, 1804—V, s. 8.

See LUNATIC.

[I. L. R. 14 Mad. 289

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 13 Mad. 197

See MISJOINDER.

[I. L. R. 13 Mad. 197

———, 1816—XII.

See PANCHAYAT.

[I. L. R. 15 Mad. 1

———, 1817—VII, s. 12.

See RIGHT OF SUIT — ENDOWMENTS, SUITS RELATING TO.

[I. L. R. 13 Mad. 277

———, 1825—II.

See STAMP—MADRAS REGULATION II OF 1825.

[I. L. R. 16 Mad. 419

———, 1831—IV.

See GRANT—RESUMPTION OR REVOCATION OF GRANT.

[I. L. R. 14 Mad. 431

MADRAS REGULATION—*concluded.*

———, 1831—VI, s. 3.

See JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

[I. L. R. 13 Mad. 41

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865).

See JURISDICTION OF CIVIL COURT—POTTAHS.

[I. L. R. 13 Mad. 361
[I. L. R. 14 Mad. 441

———, s. 1, and s. 13.—*Inamdar—Tenant—Right of distraint—Inam Commissioner.*] A zemindar, holding his estate under a *sanad*, which included, among the assets of the zemindari, the *jodi* payable by an *inamdar*, proceeded under the Rent Recovery Act to recover arrears of *jodi* by distraint. In a suit by the *inamdar* to release the distraint, it appeared that the plaintiff had sublet the land, and that the rate, at which the *jodi* was claimed, exceeded that entered in the Inam Commissioner's *pottah*:—*Held* (1) that the *inamdar* was a tenant of the zemindar within the meaning of the Rent Recovery Act; (2) that the fact that the *inamdar* had sublet the land did not confer on him a higher *status* than that of a tenant; (3) that the zemindar accordingly had a right to proceed under the Rent Recovery Act, and that his claim was not limited to the amount of *jodi* entered in the Inam Commissioner's *pottah*. SURYANARAYANA *v.* APPA RAU.

[I. L. R. 16 Mad. 40

———, s. 2.—*Limitation.*] In a suit by a tenant against a zemindar to release an attachment made under the Madras Rent Recovery Act, s. 40, it appeared that, according to the *kistbandi* obtaining in the zemindari, rent was payable in monthly instalments, commencing with November in each *fasli*:—*Held*, that the unit for the rule of limitation prescribed by Rent Recovery Act, s. 2, for proceedings by the landlord was the aggregate rent in arrear at the end of the *fasli*. APPAYASAMI *v.* SUBBA.

[I. L. R. 13 Mad. 463

1.—s. 3.—*Landholders — Mulgar.*] *Quære*—Whether a *mulgar* is within the class of landholders defined in the Madras Rent Recovery Act, s. 3. KRISHNA *v.* LAKSHMINARANAPPA.

[I. L. R. 15 Mad 67

2.—s. 3.—*Registered zemindar—Zemindari held in coparcenary—Co-sharers, right of one of several, to sue.*] A registered holder of a zemindari sued under the Madras Rent Recovery Act to enforce the acceptance of a *pottah* and execution of a *muchalka* by the defendant, a tenant on the estate. It was pleaded, in defence, that the zemindari was the undivided property of the plaintiff and his coparceners, in whose name a *pottah* and *muchalka* had already been exchanged:—*Held*, that the plaintiff, as being the registered zemindar, was entitled to maintain the suit alone. AYYAPPA *v.* VENKATAKRISHNAMARAZU.

[I. L. R. 15 Mad. 484

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865), s. 4—*concld.*

———, s. 4, and s. 11.—*Acceptance of pottah not in accordance with the Act.*] A tenant having accepted a *pottah* (which did not give the particulars described in s. 4 of the Madras Rent Recovery Act), and having executed to the landlord a *muchalka* which was registered, is not entitled to obtain in a summary suit an order setting aside a distraint by the landlord for arrears of rent. APPA RAU *v.* VIRANNA.

[I. L. R. 13 Mad. 271

———, s. 7.

See LIMITATION ACT. ART. 131.

[I. L. R. 15 Mad. 161

———, s. 8.

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.

[I L. R. 15 Mad. 223

See THEFT.

[I. L. R. 16 Mad. 364

———, s. 9.

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.

[I. L. R. 15 Mad. 223

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

[I. L. R. 13 Mad. 287

1.—s. 9.—*Tender of pottah by post—Landlord and tenant.*] A landlord sent a *pottah* by post to his tenant, who declined to receive it:—*Held*, the tender of the *pottah* by post was not sufficient to support a suit under s. 9 of the Madras Rent Recovery Act. SAMINATHA *v.* VIRANNA.

[I. L. R. 13 Mad. 42

2.—s. 9, and ss. 10, 11.—*Improper stipulations in pottah—Claim of tenants to hold over land after expiry of lease—Civil Procedure Code, s.* 544.] In summary suits brought by a landlord to enforce acceptance by his tenants of *pottahs* tendered by him for the current *fasli*, it was pleaded that the *pottahs* were improper in that they did not comprise certain land of which the tenants were in possession and in which they claimed permanent occupancy rights, and also in that they contained various terms which the plaintiff was not entitled to impose on the defendants, providing (*inter alia*) (1) that interest should be payable on the several instalments of rent as they became due; (2) that the defendant should not fell certain trees except for agricultural purposes; (3) that the defendants should not reap their crops without previously obtaining the plaintiff's permission; (4) that on a change made without the plaintiff's permission from dry to wet cultivation, the tenancy should be forfeited in case of default made by the defendants in paying the amount of Government assessment, and also an undetermined sum then to become payable by the defendants to the plaintiff in addition to the rent. The defendants failed to prove the permanent occupancy rights claimed over the land not comprised in the *pottahs*, and it

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865), s. 9—*concld.*

appeared that they had held leases from the plaintiff for the land in question for a period of three years and had held over after the expiry of the leases without the permission and contrary to the wishes of the landlord; and it further appeared that the provision as to trees did not extend to shrubs, &c., and had been an accepted term in the *pottahs* issued for ten years. The Revenue Court modified the terms of the *pottahs* and passed decrees that the *pottahs* as modified be accepted, against which some only of the defendants appealed, and the District Judge on appeal introduced further modifications into the *pottahs*:—*Held* (1) that the District Judge had no jurisdiction under Civil Procedure Code, s. 544, to introduce further modifications into the *pottahs* in favour of the defendants who had not appealed according to the opinion formed by him in appeals preferred by the defendants in other suits; (2) that the defendants were not entitled to have the *pottahs* modified by enlarging the extent of the land comprised in them, or by the cancellation of the provisions as to interest and as to felling trees; (3) that the defendants were entitled to have the *pottahs* modified by the cancellation of the provision as to reaping crops and of the provision for forfeiture. RANGAYYA APPA RAU *v.* KADIYALA RATNAM.

[I. L. R. 13 Mad. 249

———, s. 10.

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.

[I. L. R. 15 Mad. 223

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 16 Mad. 451

1.—s. 11.—*Implied contract as to rent—Land irrigated under Kistna anicut—Collector's sanction to increase of rent.*] Land in a zemindari in the Kistna delta was newly irrigated from anicut channels. The zemindar tendered *pottahs* at wet rates:—*Held* (1) that the zemindar was not entitled to levy increased rates without the Collector's sanction under s. 11 of Madras Act VIII of 1865, although he had expended money on the channels; (2) that payment for five years of such wet rates under a five years' lease did not imply a contract to continue such payments; (3) that a stipulation in the previous lease binding the tenants to pay such increased rates in case of future irrigation did not bind the tenants after the term of that lease expired. NARASIMHA NAIDU *v.* RAMASAMI.

[I. L. R. 14 Mad. 44

2.—s. 11.—*Lands irrigated from Kistna anicut—Madras Act (VII of 1865), s. 4—Restriction as to felling trees—Implied contract as to rent.*] A zemindar holding lands irrigated by the Kistna anicut, from whom no extra *peishcush* is on that account levied by Government, is not entitled to impose on his tenants a "wet" rate of rent without the permission of the Collector under s. 11 of Madras Act VIII of 1865. The

MADRAS RENT RECOVERY ACT (MADRAS ACT VIII OF 1865), s. 11—*concld.*

fact that the tenants have paid rent at such a rate for six years is not sufficient to establish an implied covenant to continue to do so. It is allowable for a landlord to insert in his *pottahs* a term to the effect that the tenant shall not fell trees without his consent. APPARAU *v.* NARASANNA.

[I. L. R. 15 Mad. 47

3.—s. 11.—*Form of pottah—Form of rent determined by implied contract—Variation in amount of rent.*] In a landlord's suit to enforce acceptance of a *pottah* and execution of a *muchalka* by the defendants, it appeared that the predecessor in title of the defendants had accepted from the predecessor in title of the plaintiff in 1849 a *cowle* for eleven years, which provided for payments in kind, but since the expiry of that period the rent had always been paid in money, though the amount varied. The tenant was described in the *cowle* as a *sukavasi* ryot, and the defendants also claimed to be *sukavasi* tenants:—*Held*, that it was unnecessary to determine the cause of the variations in the amount of rent, and that an agreement that the rent should continue to be paid in money should be implied, and the landlord accordingly was not entitled to impose a *pottah* providing for payment of rent in kind. POLU *v.* RAGAVAMMAL.

[I. L. R. 14 Mad. 52

———, s. 12.

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

[I. L. R. 13 Mad. 124
[I. L. R. 15 Mad. 67

See ONUS PROBANDI—LANDLORD AND TENANT.

[I. L. R. 16 Mad. 271

———, s. 27.

See APPEAL—DECREES.

[I. L. R. 13 Mad. 248

———, s. 49.

See DEPUTY COLLECTOR, JURISDICTION OF.

[I. L. R. 16 Mad. 323

———, s. 51.—*Suit to enforce acceptance of improper pottah—Limitation.*] A landlord sued his tenants in the Court of a District Munsif to enforce acceptance of *pottahs* and the execution of *muchalkas* by them, and to recover arrears of rent. The suits were filed more than thirty days after tender of the *pottahs*, which were found to contain certain improper stipulations:—*Held*, the suit was not barred by the rule of limitation in Rent Madras Recovery Act, s. 51. EASWARA DOSS *v.* PUNGAVANCHARI.

[I. L. R. 13 Mad. 361

———, s. 76.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 16 Mad. 451

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864).

———, s. 2.—*Remedies of assignee from Government of land revenue—Land security for revenue.*] The land revenue payable on certain land having been assigned to a temple by Government, although they continued to issue a *pottah* for the land, the *panchayat* of the temple are entitled to sue for the arrears of revenue due, and under s. 2 of Madras Act II of 1864 the land itself is security for the revenue due on it, and they can therefore bring the land to sale to discharge arrears accrued due. KRISHNASAMI *v.* VENKATARAMA.

[I. L. R. 13 Mad. 319

———, ss. 32, 41.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

[I. L. R. 13 Mad. 479

———, s. 39.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

[I. L. R. 13 Mad. 89

———, s. 42.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

[I. L. R. 13 Mad. 89

[I. L. R. 16 Mad. 144

———, s. 44.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

[I. L. R. 13 Mad. 477

———, s. 52.—*Karnam in a permanently-settled zemindari—Revenue servant.*] The *karnam* in a permanently-settled zemindari is a village servant employed in revenue duties within the meaning of the Madras Revenue Recovery Act, s. 52. COLLECTOR OF NORTH ARCOT *v.* NAGI REDDI.

[I. L. R. 15 Mad. 35

———, s. 59.—*Abkari notification referring to that Act—Sale to recover sum due from an abkari renter—Limitation for suits to recover land so sold.*] The right of selling toddy at certain places was put up to auction by the Collector under a notification which required that payments should be made at fixed periods, and that the purchaser should take out licenses as therein provided, failing which the shops concerned might be re-sold, and any loss accruing to Government recovered under the Madras Revenue Recovery Act. The plaintiff bid at the auction, and his bid was accepted. He sought to withdraw from the contract, but the sale to him was confirmed, and on his failure to make the payments above referred to, the rights purchased by him were re-sold at a lower price, and his house was attached and sold as under the Madras Revenue Recovery Act to realise the loss occasioned to Government by the re-sale.

MADRAS REVENUE RECOVERY ACT (MADRAS ACT II OF 1864), s. 59—*concld.*

In a suit, in 1888, to recover the house from the defendant who had purchased it and been placed in possession in June 1886:—*Held*, that the suit was not barred by s. 59 of the Act as having been brought more than six months after the date of the sale, but that it was governed by the general law of limitation under which the plaintiff had twelve years to sue; and that the sale was *ultra vires*. RAMAN *v.* CHANDAN.

[I. L. R. 15 Mad. 219

MADRAS TOWNS IMPROVEMENT ACT (MADRAS ACT III OF 1871).

———. s. 51.—*Notice by owner of claim to remission of house-tax.*] The notice which an owner of property must give in order to entitle himself to a remission of the house-tax is an annual notice. PURUSHOTTAMA *v.* MUNICIPAL COUNCIL OF BELLARY.

[I. L. R. 14 Mad. 467

MADRAS VILLAGE COURTS ACT (MADRAS ACT I OF 1889).

———, s. 13.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.

[I. L. R. 13 Mad. 145

MAGISTRATE, DUTY OF.

See BOMBAY DISTRICT MUNICIPAL ACT, s. 84.

[I. L. R. 17 Bom. 731

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—LIKELIHOOD OF BREACH OF THE PEACE.

[I. L. R. 20 Calc. 513, 520

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[I. L. R. 14 Bom. 381

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[I. L. R. 13 Mad. 24

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See CRIMINAL PROCEDURE CODE, s. 350.

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[I. L. R. 16 Mad. 230

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[I. L. R. 14 Mad. 140

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[I. L. R. 17 Calc. 562

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT-OF-WAY, WATER, &C.

[I. L. R. 14 Bom. 25

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[I. L. R. 14 All. 49

See REFERENCE TO HIGH COURT—CRIMINAL CASES.

[I. L. R. 15 Mad. 36

See WARRANT.

[I. L. R. 13 Mad. 18

(1) GENERAL JURISDICTION.

1.—*Criminal Procedure Code, s.* 555—*Opium Act* (*I of* 1878), *s.* 9—*Jurisdiction of officer in charge of excise and opium administration of a district to try cases under the Opium Act—Meaning of the term "Personally interested."*] A Magistrate in charge of the excise and opium administration of a district is not "personally interested" in the observance of the provisions of Act I of 1878. He is therefore not precluded from exercising jurisdiction in respect of offences against the above-mentioned Act. IN THE MATTER OF THE PETITION OF GANESHI.

[I. L. R. 15 All. 192

MAGISTRATE, JURISDICTION OF—*continued.*

(1) GENERAL JURISDICTION—*continued.*

2.—*Summary procedure—Bias of Magistrate—Disqualification of Magistrate or Judge—Chairman of Municipality trying cases as Magistrate—Criminal Procedure Code, ss.* 260, 262, 263, 555—*Obstruction in public road.*] A Deputy Magistrate, being also the Chairman of a Municipality, without issuing process, or making a record of the proceedings, or dismounting from a pony on which he was riding, convicted and fined an inhabitant of the town, who admitted that he had raised the level of a road within the limits of the Municipality which was considered by the Magistrate to amount to the offence of causing an obstruction in a public way:—*Held*, the Magistrate's procedure was illegal, and the conviction should be set aside. QUEEN-EMPRESS *v.* ERUGADU.

[I. L. R. 15 Mad. 83

3.—*Criminal Procedure Code Act* (*X of* 1882), *s.* 555—*Disqualification of Magistrate to try a case in which he is personally interested—Statements made out of Court.*] The accused was convicted of reckless and furious driving on a public thoroughfare under cl. 3 of s. 31 of Bombay Act VII of 1867. The complainant was a servant of the Magistrate who tried the case, and it appeared that the Magistrate's wife was driving in a dog-cart on the thoroughfare when the *tonga* driven by the accused passed by:—*Held*, that the Magistrate was incompetent to try the case, as he was "personally interested" in it, within the meaning of s. 555 of the Code of Criminal Procedure (Act X of 1882). It is extremely improper for a Magistrate, in disposing of a case, to rely in any way on statements made to him out of Court. QUEEN-EMPRESS *v.* SAHADEV VALAD TUKARAM.

[I. L. R. 14 Bom. 572

4.—*Disqualifying interest of Magistrate—Criminal proceedings — Irregularity — "Personally interested"—Criminal Procedure Code,* 1882, *s.* 555.] Where a District Magistrate, as prosecutor, initiated and directed the proceedings against certain accused persons who were charged by him with having committed offences punishable under ss. 143 and 150 of the Penal Code, and where it appeared that the District Magistrate had himself taken an active part in causing the dispersion of the unlawful assembly, and had pursued and directed the pursuit of the members thereof, and that he subsequently took pains to collect the evidence showing the connection of the accused with the unlawful assembly and the keeping of armed men, on which evidence the accused were afterwards convicted by himself; and where it also appeared from the judgment of the District Magistrate that he had embodied therein matters which, if relevant, showed that he should have been examined as a witness, and that such matters should not have been stated without the accused having had an opportunity of testing them by cross-examination:—*Held*, that the District Magistrate was disqualified from trying the case himself, and that the conviction must be set aside

MAGISTRATE, JURISDICTION OF—*continued.*

(1) GENERAL JURISDICTION—*concluded.*

and a fresh trial held before some other Magistrate. The words "personally interested" as used in s. 555 of the Code of Criminal Procedure do not merely mean "privately interested" or "interested as a private individual," but include such an interest as the District Magistrate must have had under the above circumstances in the conviction of the accused. GIRISH CHUNDER GHOSE *v.* QUEEN-EMPRESS.

[I. L. R. 20 Calc. 857

(2) TRANSFER OF MAGISTRATE DURING TRIAL.

5.—*Criminal Procedure Code, s.* 40—*Transfer of a Sub-Registrar invested with powers of a Special Magistrate—Madras Police Act* (*XXIV of* 1859), *s.* 48.] A Sub-Registrar, having been invested with magisterial powers with reference to offences under Act XXIV of 1859, was transferred from the place where he was officiating at the time he was so invested to another place, and there took on to his file and tried certain cases of offences under that Act. The District Magistrate having reported the cases for the orders of the High Court, the Court declined to quash his proceedings. QUEEN-EMPRESS *v.* VIRANNA.

[I. L. R. 15 Mad. 132

(3) POWERS OF MAGISTRATES.

6.—*District Magistrate, power of, to order further enquiry—Improper discharge—Sessions case, further enquiry directed in—Criminal Procedure Code* (*Act X of* 1882), *ss.* 436, 437.] It is competent to a District Magistrate, who has issued a notice to an accused person who in his opinion has been improperly discharged to show cause under s. 436 of the Criminal Procedure Code why he should not be committed to the Court of Sessions, on cause being shown to order a further inquiry under the provisions of s. 437. QUEEN-EMPRESS *v.* MANIRUDDIN MUNDUL.

[I. L. R. 18 Calc. 75

7.—*Penal Code, s.* 228—*Insulting a Magistrate—Criminal Procedure Code, s.* 195.] The accused intentionally insulted a Village Munsif in the discharge of his magisterial duties: the Village Munsif did not prefer a complaint or sanction a prosecution, but a Second Class Magistrate charged the accused under Penal Code, s. 228, on a Police report and convicted him:—*Held*, that the Second Class Magistrate was competent to try the complaint, and the conviction was right. QUEEN-EMPRESS *v.* VENKATASAMI.

[I. L. R. 15 Mad. 131

8.—*Criminal Procedure Code, s.* 191.—*Magistrate taking cognizance of an offence on his own personal knowledge—Right of accused to have the case transferred.*] Where a Magistrate was found to have taken cognizance of an offence under cl. (*c*) of s. 191 of the Code of Criminal Procedure:—*Held*, that he had no power, on an application

MAGISTRATE, JURISDICTION OF—*continued.*

(3) POWERS OF MAGISTRATES—*concluded.*

being made under the last clause of the section above-named, to refuse to transfer the case. QUEEN-EMPRESS *v.* HAWTHORNE.

[I. L. R. 13 All. 345

9.—*Criminal Procedure Code, s.* 454—*European British subject—Relinquishment of right to be dealt with as such British subject—Trial by Second Class Magistrate.*] A European British subject was prosecuted in the Court of a Second Class Magistrate, who was a Hindu, on a charge of mischief. The accused appeared and did not plead to the jurisdiction of the Magistrate, who proceeded with and disposed of the case:—*Held*, that the Magistrate had not acted *ultra vires*, since the accused had relinquished his right to be dealt with as a European British subject. QUEEN-EMPRESS *v.* BARTLETT.

[I. L. R. 16 Mad. 308

10—*Criminal Procedure Code* (*Act X of* 1882), *s.* 164—*Oaths Act* (*X of* 1873), *ss.* 4, 5, 14.—*False evidence.*] A Magistrate, acting under Criminal Procedure Code, s. 164, has power to administer an oath, and a charge of perjury can be framed with regard to statements made before him on oath when he is so acting. QUEEN-EMPRESS *v.* ALAGU KONE.

[I. L. R. 16 Mad. 421

(4) REFERENCE BY OTHER MAGISTRATES.

11—*Criminal Procedure Code, ss.* 195, 476—*Reference to "nearest Magistrate of the First Class"—Sanction to prosecution.*] A Head Assistant Magistrate sanctioned a prosecution under Criminal Procedure Code, s. 195, on the charge of preferring a false complaint, and forwarded his proceedings to the Deputy Magistrate of another division of the district who ordinarily had no jurisdiction to try offences committed in the division under the Head Assistant Magistrate:—*Held*, that the Deputy Magistrate had jurisdiction to try the charge. QUEEN-EMPRESS *v.* NAGAPPA.

[I. L. R. 16 Mad. 461

(5) WITHDRAWAL OF CASES.

12. *Criminal Procedure Code* (*Act X of* 1882), *ss.* 17, 528—*Transfer of criminal case.*] A Magistrate who is subordinate to a Sub-divisional Magistrate is also subordinate to the District Magistrate within the meaning of Criminal Procedure Code, s. 528. Neither s. 17 of the Code nor Sch. III can be so construed as to take away the special power conferred by s. 528. Where, therefore, a Joint Magistrate transferred a complaint from the Second Class Magistrate of K to the Taluk Magistrate of P:—*Held*, that the District Magistrate had jurisdiction, under s. 528 of the Code, to withdraw the case from the Magistrate of P and to re-transfer it to the Magistrate of K. THAMAN CHETTI *v.* ALAGIRI CHETTI.

[I. L. R. 14 Mad. 399.

MAGISTRATE, JURISDICTION OF — *concluded.*

(5) WITHDRAWAL OF CASES—*concluded.*

13. *Criminal Procedure Code, s.* 528—*Village Munsif—Transfer of criminal case.*] A Village Munsif not being a Magistrate under the Criminal Procedure Code, a Joint Magistrate has no power under the Criminal Procedure Code, s. 528, to withdraw a case from a Village Munsif and transfer it for disposal to a Second Class Magistrate. MADAVARAYACHAR *v.* SUBBA RAU.

[I. L. R. 15 Mad. 94

(6) SPECIAL ACTS.

(*a*) COMPANIES ACT (VI OF 1882).

14.—*Companies Act* (*VI of* 1882), *ss.* 35, 252—"*Forfeit*"—"*Penalty*"—*Share warrant not duly stamped—Stamps on share warrants—Criminal Procedure Code* (*Act X of* 1882), *s.* 32—*Fine.*] There is no distinction between the word "forfeit" as used in s. 35 of the Indian Companies Act and the word "penalty" as used in other sections of the Act, and the omission to duly stamp a share warrant under that section is an offence under the Act punishable by a penalty, to enforce the payment of which a Magistrate has jurisdiction under s. 252. In a case under s. 35 a Magistrate has no option but to inflict the full fine of Rs. 500 if the offence be proved. Where a person was charged, as being the principal officer of a company, with having issued nine share warrants not duly stamped, in respect of which the penalties claimed under s. 35 amounted to Rs. 4,500, and where it was contended that the infliction of such a penalty was beyond the jurisdiction of the Magistrate, which under the provisions of s. 32 of the Code of Criminal Procedure was limited to inflicting a fine of Rs. 1,000:—*Held*, that the issue of each of the nine share warrants, was a separate offence, and the fact that several offences had been committed, and therefore that the Magistrate's power to fine would extend to more than Rs. 1,000, was not affected by that section of the Code. QUEEN-EMPRESS *v.* MOORE.

[I. L. R. 20 Calc. 676

MAHOMEDAN LAW — ACKNOWLEDGMENT.

— *Legitimacy.*] *Held*, that a Mahomedan could not by acknowledging him as his son render legitimate a child whose mother at the time of his birth he could not have married by reason of her being the wife of another man. *Muhammad Allahdad Khan* v. *Muhammad Ismail Khan*, I. L. R. 10 All. 289, followed. LIAQAT ALI *v.* KARIM-UN-NISSA.

[I. L. R. 15 All. 396

MAHOMEDAN LAW—CUSTOM.

See JURISDICTION OF CIVIL COURT—RELIGION.

[I. L. R. 15 Mad. 355

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 21 Calc. 157

MAHOMEDAN LAW—CUSTOM—*continued.*

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.

[I. L. R. 21 Calc. 157

1.—*Public worship in mosque—Injunction restraining defendants from interrupting religious ceremonies in a musjid—Right of imam and of mutwali to be protected in their offices—Differences of opinion between the imam and certain of the worshippers as to observances at prayer.*] Among Sunni Mahomedans, neither on the ground of any general and express rule of Mahomedan law, nor on the ground of the growth of customs separating different schools in so marked a manner that the followers of one school could not properly worship with those of another, did the introduction by the *imam* of (*a*), the loud-toned Amen, and of (*b*) the Rafadain, show such a change of tenets. Nor was it in itself such an important departure from the custom of Sunnis as that it would disqualify the *imam* for officiating in a *musjid* where those ceremonies had not previously been used. Nor did the introduction of (*a*) and of (*b*) justify a section of the worshippers in setting up another leader of prayer at the same time that prayer was being conducted by the duly authorized *imam*. On the lower Appellate Court's findings of fact there was nothing in the constitution of the mosque which prohibited the adoption of (*a*) and (*b*), and those findings were conclusive. For the purpose, however, of considering the case from other points of view, their Lordships examined the whole of the evidence, and they agreed with the Subordinate Judge that there was no evidence showing that the mosque was not intended for the worship of all Sunnis or for all Mahomedans. Nor was there any rule of law that, when public worship had been performed in a certain way for twenty years, there could not be any variation, however slight, from that way. The question in each case of dispute must be as to the magnitude and importance of the alleged departure. There had not been produced any text to show that a follower of Abu Hanifa would do wrong in following a practice recommended by others of the four *imams*. Nor was there any usage having the force of law among Sunni communities, forbidding the introduction of (*a*) and (*b*) into ceremonial prayer, as shown by the evidence of learned Mahomedans, and by proof of their actual practice. The judgments in *Empress* v. *Ramzan*, I. L. R. 7 All. 461, and *Ataulla* v. *Azimulla*, I. L. R. 12 All. 494, referred to. The Court ought not to declare that the *imam* or *mutwalis* of the *musjid* had authority to eject the dissentients, if and when they interfered. The plaintiffs must rely on the prohibitory order or injunction, which could be enforced according to law if the occasion arose. FAZL KARIM *v.* MAULA BAKSH.

[I. L. R. 18 Calc. 448
[L. R. 18 I. A. 59

2.—*Succession to property among Kanchans—Practices not recognizable by law as customs—Immoral customs.*] Among Mahomedan Kanchans, practices relating to their holding and inheritance

MAHOMEDAN LAW—CUSTOM—*concluded.*

of property, having an immoral tendency, were held to be not recognizable as customs, or enforceable as law. To recognize practices tending to promote prostitution, which the Mahomedan law reprobates and prohibits absolutely, would be contrary to the policy of that law. Where property left by a female Kanchani, deceased, was claimed by her legitimate kindred, it was *held* that an "adoption," so called, in conformity with those practices, had not operated to separate her from the family in which she was born. The mode in which her property had been acquired was not the subject of the present question, which was only concerned with the right of personal succession to it; and that property was held to be distributable according to the rules of the Mahomedan law governing inheritance. GHASITI *v.* UMRAO JAN. GHASITI *v.* JAGGU.

[I. L. R. 21 Calc. 149
[L. R. 20 I. A. 193

MAHOMEDAN LAW—DEBTS.

Suit by creditor of deceased Mahomedan against his heir—Administration, suit for.] In a suit against the widow of a Mahomedan on the ground that she was in possession of his estate, and where there were other heirs of the deceased, *held*, following the principle laid down in the case of *Mutty Jan* v. *Ahmed Ally*, I. L. R. 8 Calc. 370, that the suit was properly brought against the widow, and that her liability was to be measured, not by the extent of her interest in her late husband's property, but by the amount of the assets of his estate which had come into her hands, and which she had not duly disbursed in the discharge of the liabilities to which the estate was subject at her husband's death. AMIR DULHIN *alias* MOHAMDI JAN *v.* BAIJ NATH SINGH *alias* BAIJU SINGH.

[I. L. R. 21 Calc. 311

MAHOMEDAN LAW—DOWER.

See EVIDENCE ACT, S. 32.

[I. L. R. 19 Calc. 689

See RESTITUTION OF CONJUGAL RIGHTS.

[I. L. R. 17 Calc. 670

1.—*Oudh, law of, relating to reduction in amount of dower—Determination of amount of deferred dower recoverable from representatives of deceased husband married in, but a non-resident of, Oudh, not affected by law of that Province—Usage having force of law.*] A Mahomedan, a resident in Patna, since deceased, married the plaintiff, while he was for a time in Lucknow where she lived. Upon her claim, as his widow, for her deferred dower, it was found to have been contracted for at the amount alleged by her. The question of the amount of her dower was held to be determinable without reference to a usage having the force of law in Oudh, rendering dower reducible in certain cases by the Court. The place of celebration of the marriage did not make this applicable. ZAKERI BEGUM *v.* SAKINA BEGUM.

[I. L. R. 19 Calc. 689
[L. R. 19 I. A. 157

MAHOMEDAN LAW—DOWER—*concluded.*

2.—*Law in Oudh—Discretionary power of the Courts over the amount of dower—The Oudh Laws Act (XVIII of 1876), s. 5.*] In a suit by a wife for her dower the Appellate Court altered the amount decreed by the First Court, as a reasonable sum payable in lieu of an excessive one, which the husband had on the date of the marriage nominally entered in a *nikahnama* as the wife's dower. Both Courts acted under the Oudh Laws Act (XVIII of 1876), s. 5. The Judicial Committee having examined the grounds on which each of the Courts had exercised its discretionary power, considered the reason given by the First Court to be sound and restored its decree. SULEMAN KADR *v.* MEHDI BEGUM SURREYA BAHU.

[I. L. R. 21 Calc. 135
[L. R. 20 I. A. 144

MAHOMEDAN LAW—ENDOWMENT.

See MAHOMEDAN LAW—MOSQUE.

[I. L. R. 12 All. 494
[I. L. R. 13 All. 419

See PARTIES—SUIT BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

[I. L. R. 20 Calc. 810

See RIGHT OF SUIT—CHARITIES.

[I. L. R. 20 Calc. 810

1.—*Appropriation not within the principle of wakf—Property settled on members of grantor's family with a charge upon it for religious and charitable purposes—Effect of appropriation where the charge was not a substantial one.*] Although the making provision for the grantor's family out of property dedicated to religious or charitable purposes may be consistent with the property being constituted *wakf*, yet in order to render it *wakf* the property must have been substantially, and not merely colourably, dedicated to such purposes. Although an instrument purporting to dedicate property as "*fisabilillah wakf*," and vesting it in members of the grantor's family in succession, "to carry on the affairs in connection with the *wakf*," might include provisions for the benefit of the grantor's family without its operation as a *wakf* being annulled, yet, on the other hand, it would not operate to establish *wakf*, as it did not devote a substantial part of the property to religious or charitable purposes. Without determining how far provisions for the grantor's family might form part of a settlement for religious or charitable purposes, and yet not deprive it of its character as establishing *wakf*, the Committee approved the decision in *Muzhurool Huq* v. *Puhraj Ditarey Mohapattur*, 13 W. R. 235, to the effect that the mere charge upon the profits of the estates of certain items which must in the course of time have ceased, being for the benefit of one family, did not render an endowment invalid as a *wakf*. In the present case, however, there being no authority for holding a gift to be good as a *wakf* without there being a substantial dedication of the property to charitable or religious uses at some

MAHOMEDAN LAW — ENDOWMENT—*continued.*

time or other; and the uses prescribed involving only an outlay suitable for such a family to make in charity, the gift was held not to be a substantial, or *bonâ-fide* dedication of the property as *wakf*. The use of this expression, and others, being only to cover arrangements for the benefit of the family and to make their property inalienable, the property was not constituted *wakf*, nor was it freed from liability to attachment in execution of a decree against one of the grantees. MAHOMED AHSANULLA CHOWDHRY *v.* AMARCHAND KUNDU.

[I. L. R. 17 Calc. 498
[L. R. 17 I. A. 28

2.—*Wakf, constitution of—Dedication of property with temporary intermediate interests — Uncertain contingency.*] To constitute a valid *wakf* there must be a dedication in favour of a religious or charitable purpose, although there may be a temporary intermediate application of the whole or part of the benefits thereof to the family of the appropriator or *wakif*, and the dedication must not depend upon an uncertain contingency, such as the possible extinction of the *wakif's* family. RASAMAYA DHUR CHOWDHURI *v.* ABUL FATA MAHOMED ISHAK.

[I. L. R. 18 Calc. 399

3.—*Wakf, constitution of—Dedication to pious objects — Sajjadanashin. — Mutwali — Minor appointment of, as sajjadanshin.*] In order to constitute a *wakf* it is not necessary to use the word *wakf*. So long as it appears that the intention of the donor is to set apart any specific property or the proceeds thereof for the maintenance or support in perpetuity of a specific object or of a series of objects recognized as pious by Mahomedan law, it amounts to a valid and binding dedication. *Jewan Dass Shahu Shah* v. *Kubeeroodeen*, 2 Moo. I. A. 390, referred to. The respective duties of *sajjadanashin* and *mutwali* discussed The mode of appointment of *sajjadanashin* referred to. *Semble*:—A minor cannot be appointed the *sajjadanashin* of a *durgah* or shrine. PIRAN *v.* ABDOOL KARIM.

[I. L. R. 19 Calc. 203

4.—*Settlement in favour of the settlor's family with the reservation of a life intevest in part or the whole of the income for the settlor—"Charitable"—"Religious."*] A *wakf* in favour of the settlor's children and kindred in perpetuity, with a reservation of a part or the whole of the income thereof in favour of the settlor for his own use during his lifetime, is valid. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu*, I. L. R. 17 Calc. 498: L R 17 I. A. 28, referred to. *Rasamaya Dhur Chowdhuri* v. *Abul Fata Mahomed Ishak*, I. L. R. 18 Calc. 399, dissented from. In the construction of a deed of *wakf*, the words 'charitable' and 'religious' must be taken in the sense in which they are understood in Mahomedan law. MAHOMED ISRAIL KHAN *v.* SASHTI CHURN GHOSE.

[I. L. R. 19 Calc. 412

MAHOMEDAN LAW — ENDOWMENT—*continued.*

5.—*Wakf—Conditional and revocable dedication—Conditions of a valid dedication.*] A Mahomedan by an instrument revoking a previous trust deed conveyed her property to her husband on trust as follows:—(1) to maintain the settlor and her children out of the income; (2) to hand over the property to the children on their attaining majority; (3) in the event of the settlor's death without leaving children, with the income of the property to have *Kathom* recited in a mosque, give food to the *Mollahs* who come there for reciting the same and get the *moilu* performed. The settlor reserved to herself and her representatives an option of dealing with the property as a special fund for the maintenance of her children, if any. The settlor died leaving no children. In a suit by her half-sister against her husband and others to recover her share of the property:—*Held, per* MUTTUSAMI AYYAR and PARKER, JJ., that the plaintiff was entitled to recover her proportionate share of the property, notwithstanding the provisions of the above instrument. *Per* SHEPHARD, J.—There had been no complete dedication of the property, and except so far as regards the income required for the three specific objects named by the donor, her property was undisposed of. Conditions of a valid *wakf* considered. PATHUKUTTI *v.* AVATHALAKUTTI.

[I. L. R. 13 Mad. 66

6.—*Wakf—Construction of document.*] Where a Mahomedan of the Shia sect executed a document purporting to come into operation after his death, which document provided in a most complete manner of the devolution of his property, with the intention apparently of preserving the estate in perpetuity intact under the headship of some male member of the family, with provision by way of allowances for the other members, and of maintaining the dignity of the *riasat*, and in which no express mention of any sort of dedication of the property to charitable purposes was made, though there was some incidental reference to certain religious duties:—*Held*, that such a document could not be construed as creating a *wakf*. Though it was not impossible that a document creating a *wakf* might contain provision also for the family of the settlor, the dedication to charitable uses being postponed, yet here there was not even an ultimate dedication of the property to charitable uses, but the object of the executant was evidently merely the maintenance of the family estates and of the dignity of the *riasat*. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu*, I. L. R. 17 Calc. 498; L. R. 17 I. A. 28, followed. *Khujooroonissa* v. *Roushan Jehan*, I. L. R. 2 Calc. 184; L. R. 3 I. A. 291; and *Nizamuddin Gulam* v. *Abdul Gafur*, I. L. R. 13 Bom. 264, referred to. MURTAZAI BIBI *v.* JUMNA BIBI.

[I. L. R. 13 All. 261

7.—*Wakf—Wakfnamah containing provision for descendants of the grantor.*] The fact that the grantor of a *wakf* has in the deed constituting the same made some provision for the maintenance of his kindred and descendants will not

MAHOMEDAN LAW — ENDOWMENT — *continued.*

render the *wakf* invalid. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu*, I. L. R. 17 Calc. 498 ; L. R. 8 I. A. 28; and *Muzhurool Huq* v. *Puhraj Ditarey Mohapattur*, 13 W. R. 235, referred to. DEOKI PRASAD *v.* INAIT-ULLAH.

[I. L. R. 14 All. 375

8.—*Wakf—Delivery of possession—Shia sect.*] According to the law applicable to the *Shia* sect of Mahomedans a *wakf-bil-wasiyat*, or testamentary *wakf*, is not valid unless actual delivery of possession of the appropriated property is made by the *wakif* (or appropriator) himself to the *mutwali* (or superintendent appointed by the *wakif*). According to the same law the death of the *wakif* before actual delivery of possession of the appropriated property by him to the *mutwali* or the beneficiaries of the trust renders the *wakf* null and void *ab initio*. Consequently, where the *wakif* dies, as mentioned above, before actual delivery of possession of the appropriated property, the consent of his heirs to the testamentary *wakf* cannot validate such *wakf*. Distinction between *wakf-bil-wasiyat* and *wasiyat-bil-wakf*, explained. AGHA ALI KHAN *v.* ALTAF HASAN KHAN.

[I. L. R. 14 All. 429

9.—*Wakf—Settlement — Will — Invalidity of attempted settlement purporting to constitute a wakf— Document not establishing a trust for a religious or charitable purpose.*] A *wakfnamah* to be valid must be a substantial dedication of property to a religious or charitable purpose at some time or other. *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu*, L. R. 17 I. A. 28; I. L. R. 17 Calc. 498, referred to and followed. Where a *wakfnamah* purported to make a settlement on heirs, the settlor's intention having been to make the whole estate devolve from one generation to another, without being alienable by them, and without being liable in execution against them :— *Held*, that the instrument could neither be maintained as establishing a *wakf*, nor as a settlement: also, that it could not be supported as a will, not having been validated by consent of heirs, as to two-thirds of the succession ; and that, even if it could have been dealt with as a will, the above provision would have been void. ABDUL GAFUR *v.* NIZAMUDIN.

[I. L. R. 17 Bom. 1
[L. R. 19 I. A. 170

Affirming on appeal, NIZAMUDIN *v.* ABDUL GAFUR.

[I. L. R. 13 Bom. 264

10.—*Wakf—Relinquishment of possession on the part of the wakif essential—Sunnis.*] According to the law of *Sunni* Mahomedans it is essential to the validity of a *wakf* that the *wakif* should actually divest himself of possession of the *wakf* property. Hence where a *Sunni* Mahomedan executed and registered what purported to be a deed of *wakf*, but never acted upon it and retained possession until his death of the property

MAHOMEDAN LAW — ENDOWMENT — *continued.*

dealt with by the deed, which property subsequently passed to his two sons by inheritance. —*Held*, that no valid *wakf* of the property mentioned in the said deed was constituted. MUHAMMAD AZIZ-UD-DIN AHMAD KHAN *v.* LEGAL REMEMBRANCER, N.-W. P. AND OUDH.

[I. L. R. 15 All. 321

11.—*Wakf—Settlement in favour of the settlor's family with ultimate remainder to the poor—Dedication not substantially for religious and charitable purposes—Appropriation not within the principles of wakf—Property settled on the settlor's family with a charge upon it for religious and charitable purposes—Charge, effect upon, where wakf not valid.*] A settlor by instrument, purported to create a *wakf* in favour of his family and, in the event of a failure of his descendants, in favour of the poor of Dacca The lower Appellate Court held that the deed created a valid endowment to the extent of Rs. 75 per annum only, and that, subject to such charge, the properties were alienable:—*Held* by the majority of the Full Bench (PETHERAM, C. J., TREVELYAN and GHOSE, JJ. ; AMEER ALI, J., dissenting) upon the construction of the deed and upon the authority of *Mahomed Ahsanulla Chowdhry* v. *Amarchand Kundu*, I. L. R. 17 Calc. 498 ; L. R. 17 I. A. 28, that the instrument did not create a valid *wakf*, there being no substantial dedication to religious and charitable purposes. *Held* by the majority of the Full Bench (PRINSEP, GHOSE, and AMEER ALI, JJ.; PETHERAM, CJ., and TREVELYAN, J., dissenting) that the charge of Rs. 75 per annum should be allowed. *Held* by PRINSEP, TREVELYAN, and GHOSE, JJ., that the course of the decisions should not be disturbed by reference to texts which may favour the idea that a settlement on the settlor and his descendants in perpetuity is a pious Act. *Held* by PRINSEP and TREVELYAN, JJ., that upon the findings of the lower Courts no second appeal lay, and it was not, therefore, necessary to express any opinion as to the validity of the instrument. AMEER ALI, J.—The disposition in question, viewed according to the Mahomedan law, which supplies ample safeguards against fraud, created a valid endowment. There is a *consensus* of opinion among Mahomedan lawyers of every school and sect that *wakfs* on children, kindred, or neighbours in perpetuity are valid. To hold that a *wakf*, the benefaction of which is bestowed wholly or in part on the *wakif's* family and descendants, is invalid, would have the effect of abrogating an important branch of the Mahomedan law. A *wakf* is a permanent benefaction for the good of God's creatures. The *wakif* may bestow the usufruct, but not the property, upon whomsoever he chooses, and in any manner whatever, only it must endure for ever. If he bestows the usufruct in the first instance upon those whose maintenance is obligatory on him, or if he gives it to his descendants so long as they exist, to prevent their falling into indigence, it is a pious act, even more pious than giving to the general body of the poor. When a *wakf* is created constituting the

MAHOMEDAN LAW — ENDOWMENT — *concluded.*

family or descendants of the *wakif* the recipients of the charity so long as they exist, the poor are expressly or impliedly brought in to impart permancy to the endowment. The subsequent conduct of the *wakif* cannot in any way affect the *wakf*. BIKANI MIA *v.* SHUK LAL PODDAR.

[I. L. R. 20 Calc. 116

12.—*Rule that remuneration of mutwali should not exceed one-tenth of income of endowment—Sajjadanashin, position of.*] The rule of Mahomedan law that the remuneration of a *mutwali* should not exceed one-tenth of the income relates to such managers or *mutwalis* as have no beneficial interest in the usufruct of the endowed properties, or are strangers to the endowment. Taking into consideration the nature of the institution, the character of the grant, and the position of the *sajjadanashin*, the rule was held not to apply to the Sasseram *khankah*. MOHIUDDIN *v.* SAYIDUDDIN *alias* NAWAB MEAN.

[I. L. R. 20 Calc. 810

MAHOMEDAN LAW—GIFT.

1. Validity 693

See DEED—CONSTRUCTION.

[I. L. R. 13 All. 409

(1) VALIDITY.

1.—*Gift by a father—Gift of undivided share—Delivery of possession.*] A Mahomedan made a gift in writing to his daughter on her marriage of an undivided moiety of his share in certain buildings, which were the property of the donor's wife. On the death of the donee, her husband married her sister, and the donor thereupon similarly made a gift to her of the remaining undivided moiety. The donees were minors at the dates of their respective gifts. The husband now sued to recover the share of his first wife, of which delivery had not been made:—*Held*, that the gift was not invalid, either for indefiniteness or for want of delivery of possession. HUSSAIN *v.* MIRA.

[I. L. R. 13 Mad. 46

2.—*Death-bed gifts—Consent of heirs—Mushaa—Delivery of possession—Undue influence.*] A Mahomedan on 27th February executed two deeds of gift, by one of which (attested by all his sons) he conveyed his one-fourth share in a certain *mitta* to his daughters; and by the other (attested by all his daughters), he conveyed the rest of his landed property to his sons. The donor died on 6th March, and it was found on the evidence that the above dispositions of his property were death-bed gifts. It appeared that the donor had separate possession of the land disposed of by him, though part of it was held under joint *pottahs*, in which others were interested; and also that on the date of the gift, the transfer of ownership of the *mitta* property was proclaimed by beat of *tom-tom*, and that the tenants were called upon to attorn to the donees, who subsequently collected rent. The widow took no exception to the gifts, but after two years one of the daughters brought this suit to have them set aside as invalid and to recover her share as an heiress of her father:—*Held*, (1) on the evidence, that the attestation of the heirs was regarded by all the parties concerned as evidence of consent, and that they did consent to the death-bed gifts at the time they were made; (2) that this consent not having been revoked on the donor's death, and there having been sufficient delivery of possession the gifts were complete; (3) that the gifts were not impeachable on the ground of *mushaa*. Evidence of undue influence considered. SHARIFA BIBI *v.* GULAM MAHOMED DASTAGIR KHAN.

[I. L. R. 16 Mad. 43

MAHOMEDAN LAW—GIFT—*concluded.*

(1) VALIDITY—*concluded.*

MAHOMEDAN LAW—INHERITANCE.

See LUNATIC.

[I. L. R. 15 All. 29

See MAHOMEDAN LAW—CUSTOM.

[I. L. R. 21 Calc. 149

1.—*Co-sharers—Suit for possession of a share in the property of a Mahomedan family—Right of suit.*] In a suit in 1882 between the members of a family following the Mahomedan law of inheritance, in which the plaintiffs sued as sharers for the recovery of their share in certain property, one of the defendants pleaded that a *paramba*, part of the property in dispute, was not subject to division, but this plea was unsuccessful, and a decree was passed for the plaintiffs. The present suit was brought by a mortgagee from one of the defendants in the former suit (who had not appeared in that suit, and against whom therefore the decision had been *ex-parte*) to recover his share of the above-mentioned *paramba*, the subject-matter of his mortgage; the mortgagor was joined as defendant, among others, including the defendant who had raised the plea above stated. This plea was repeated by the same person:—*Held*, distinguishing *Venkatarama* v. *Labai Meera*, I. L. R. 13 Mad. 275, on the ground that the parties in the present case were governed by the Mahomedan law of inheritance, that the suit was maintainable. A co-sharer by Mahomedan law has a right to a specific share in each item of property left by the person from whom he inherits, and can sue to recover that share from any person in possession of the property. CHANDU *v.* KUNHAMED.

[I. L. R. 14 Mad. 324

2.—*Sunni and Shia sects—Rules of descent—Evidence as to deceased having been a Sunni.*] A Mahomedan widow, who by birth was a Sunni, but whose deceased husband had been a Shia, had during her married life conformed outwardly to his religion. The Sunni and Shia rules of inheritance differing, her true heirs could only be ascertained by determining to which of these sects the deceased belonged at the time of her death. The evidence relating to the period after her husband's death led to the conclusion that

MAHOMEDAN LAW — INHERITANCE— *concluded.*

throughout her widowhood she was a Sunni, having returned to the religion of her youth when freed from the necessities of her position as the wife of a Shia. HAYAT-UN-NISSA *v.* MUHAMMAD ALI KHAN.

[I. L. R. 12 All. 290
[L. R. 17 I. A. 73

MAHOMEDAN LAW—JOINT FAMILY.

See LIMITATION ACT, ART. 127.

[I. L. R. 14 Bom. 70
[I. L. R. 15 Mad. 57, 60
[I. L R. 16 Bom. 191
[I. L. R. 13 All. 282

MAHOMEDAN LAW—MARRIAGE.

See BIGAMY.

[I. L. R 18 Calc. 264
[I. L. R. 19 Calc. 79

MAHOMEDAN LAW—MOSQUE.

1.—*Endowment or dedication of mosque—Muhammadi or Wahabi sect—Disturbing a religious assembly—Right to say "Amin" loudly during worship.*] According to the Mahomedan law, a mosque cannot be dedicated or appropriated exclusively to any particular school or sect of Sunni Mahomedans. It is a place where all Mahomedans are entitled to go and perform their devotions as of right, according to their conscience. No one sect or portion of the Mahomedan community can restrain any other from the exercise of this right. Members of the Muhammadi or Wahabi sect are Mahomedans, and as such entitled to perform their devotions in a mosque, though they may differ from the majority of Sunni Mahomedans on particular points. But any Mahomedan would commit a criminal offence who, not in the *bonâ-fide* performance of his duties, but *malâ fide*, for the purpose of disturbing others engaged in their devotions, made any demonstration, oral or otherwise, in a mosque, and disturbance was the result. So *held* by the Full Bench. *Queen-Empress* v. *Ramzan*, I. L. R. 7 All. 461, referred to. *Per* MAHMOOD, J.—According to the Mahomedan ecclesiastical law, the word "*Amin*" must be said and should be pronounced at the end of the prayer ending with *Sura-i-Fateha;* but there is no authority for holding that it should be pronounced in a loud or in a low tone of voice; and (provided no disturbance of the public peace is caused) a Mahomedan pronouncing the word loudly, in the honest exercise of conscience, commits no offence or civil wrong. ATA-ULLAH *v.* AZIM-ULLAH.

[I, L. R. 12 All. 494

2.—*Public mosque — Right of Mahomedans without distinction of sect to use such mosque for the purposes of worship—Right to say "amin" loudly during worship.*] Where a mosque is a public mosque open to the use of all Mahomedans without distinction of sect, a Mahomedan who, in the *bonâ-fide* exercise of his religious duties in such mosque, pronounces the word "*amin*" in a loud tone of voice, according to the tenets of his sect, does nothing which is contrary to the Mahomedan ecclesiastical law or which is either an offence or civil wrong, though he may by such conduct cause annoyance to his fellow-worshippers in the mosque. But any person, Mahomedan or otherwise, who goes into a mosque not *bonâ fide* for religious purposes, but *malâ fide* to create a disturbance there and interfere with the devotion of the ordinary frequenters of the mosque, will render himself criminally liable. JANGU *v.* AHMAD-ULLAH.

[I. L. R. 13 All. 419

MAHOMEDAN LAW—PRE-EMPTION.

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1.	Right of Pre-emption	696
	(*a*) Generally	696
	(*b*) Co-sharers	696
2.	Ceremonies	696
3.	Profits after sale	697

(1) RIGHT OF PRE-EMPTION.

(*a*) GENERALLY.

1.—*Gift of land without consideration—Shankalp.*] No right of pre-emption arises where land is assigned without consideration as *shankalp*. HAR NARAIN PANDE *v.* RAM PRASAD MISR.

[I. L. R. 14 All. 333

2.—*Vicinage — Separate mahals.*] Where an estate, originally one, has been divided into two separate *mahals*, no right of pre-emption under the Mahomedan law will subsist on behalf of one of such *mahals* in respect of the other merely by reason of vicinage: nor will any right of pre-emption arise from the fact that certain appurtenances to the original *mahal* are still enjoyed in common by the owners of the separated *mahals*. ABDUL RAHIM KHAN *v.* KHARAG SINGH.

[I. L. R. 15 All. 104

(*b*) CO-SHARERS.

3.—*Property owned by more than two co-sharers —Shias.*] The prevalent doctrine of the Mahomedan law governing the Shia sect is that no right of pre-emption exists in the case of property owned by more than two co-sharers. *Daim* v. *Asooha Beebee*, 2 N. W. 360, and *Tufazzul Husain* v. *Hadi Hasan*, Weekly Notes, 1886, p. 139, dissented from. ABBAS ALI *v.* MAYA RAM.

[I. L. R. 12 All. 229

(2) CEREMONIES.

4.—*Ceremonies of "immediate demand" and "demand with invocation."*] When a person claiming a right of pre-emption has performed the *talab-i-mawasibat* in the presence of witnesses, but not in the presence either of the seller or of the purchaser, or on the premises, it is necessary that, when performing the *talab-i-ishad*, he should declare that he has made the *talab-i-mawasibat*, and at the same time should invoke

MAHOMEDAN LAW—PRE-EMPTION—*concluded.*

witnesses to attest it. *Jadunandun Singh* v. *Dulput Singh*, I. L. R. 10 Calc. 581, affirmed. *Nundo Pershad Thakur* v. *Gopal Thakur*, I. L. R. 10 Calc. 1008, over-ruled. RUJJUB ALI CHOPEDAR v. CHUNDI CHURN BHADRA.

[I. L. R. 17 Calc. 543

(3) PROFITS AFTER SALE.

5.—*Decree for pre-emption—Profits of property accruing between sale and decree becoming final—Pre-emption for Hindus—Bengal Civil Courts Act (XII of 1887), s. 37—Pre-emption on basis of contract or custom.*] In a suit for pre-emption based on the *wajib-ul-arz* of a village, the plaintiff pre-emptor did not ask for a declaration that he was entitled to be treated as a purchaser from the date of the sale to the vendees-defendants, nor that he was entitled to the rents and profits as from the date of the sale, nor did he ask for mesne profits. The decree in his favour did not grant him any such relief. The *wajib-ul-arz* was silent as to whether the purchaser or the pre-emptor was entitled to the profits accruing subsequently to the date of the sale being avoided:—*Held* by the Full Bench that the decree merely avoided the sale and divested the original owners of all interest in the property as from the date when the decree became final by the payment, in accordance with its terms, by the pre-emptor of the pre-emptive price decreed, and vested in the pre-emptor the rights of ownership from that date, and his rights were not postponed until he had obtained possession of the property. *Held*, that the profits of the property which accrued between the date of the sale and the date when the pre-emptor, in accordance with the decree, paid the decreed pre-emptive price, belonged not to the pre-emptor, nor to the original vendor, but to the original vendees. *Held*, by MAHMOOD, J., that the vendees-defendants were entitled to the profits accruing up to the date when the pre-emptor acquired possession of the property in accordance with the terms of the decree. Observations by MAHMOOD, J., upon the texts of the Mahomedan law applicable to the case by way of analogy; upon the contention that there is a Hindu law of pre-emption applicable to Hindus under s. 37 of the Bengal Civil Courts Act (XII of 1887); and upon the relation of the Mahomedan law to cases in which pre-emption is claimed on the basis of contract or custom embodied in the *wajib-ul-arz* of a village. DEOKINANDAN v. SRI RAM.

[I. L. R. 12 All. 234

MAINTENANCE.

See CASES UNDER HINDU LAW—MAINTENANCE.

See HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

[I. L. R. 17 Calc. 674

[I. L. R. 15 All. 382

MAINTENANCE—*concluded.*

——, Future maintenance.

See EXECUTION OF DECREE—MODE OF EXECUTION—MAINTENANCE.

[I. L. R. 19 Calc. 139

——, Suit for—

See SMALL CAUSE COURT MOFUSSIL—JURISDICTION—MAINTENANCE, SUIT FOR.

[I. L. R. 16 Bom. 267

——, Property assigned in lieu of—

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.

[I. L. R. 15 All. 371

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

1. *Criminal Procedure Code, s. 488—Liability of a Hindu not divided from his father to maintain his wife.*] A Hindu not divided from his father can be ordered to maintain his wife under s. 488 of the Code of Criminal Procedure. QUEEN-EMPRESS v. RAMASAMI.

[I. L. R. 13 Mad. 17

2.—*Criminal Procedure Code, s. 488—Question to be determined under that section—Maintenance of wife—Wife's right to separate maintenance.*] Before a Magistrate makes an order under s. 488 of the Code of Criminal Procedure (Act X of 1882), he must find that the complainant is the wife of the person from whom she claims maintenance, and that he has either neglected or refused to maintain her. The complainant claimed maintenance from her husband, *G*, under s. 488 of the Code of Criminal Procedure. In the course of the proceedings, *G* pleaded that his marriage with the complainant was not valid according to Hindu law, but offered to maintain her in his house as he had hitherto done. This offer was not accepted. The Magistrate held that the offer was not one within the meaning of s. 488 of the Code of Criminal Procedure, because *G* denied the validity of his marriage with the complainant, and refused to keep her with him *as his wife*:—*Held*, that there is no authority for the proposition that the words "as his wife" should be read into s. 488 of the Code of Criminal Procedure. *Marakkal* v. *Kandappa Goundan*, I. L. R. 6 Mad. 371, dissented from. IN RE GULABDAS BHAIDAS.

[I. L. R. 16 Bom. 269

3.—*Criminal Procedure Code, s. 488—Order for maintenance of wife—Wife living apart from her husband for good cause—Jurisdiction.*] Where a wife after a temporary absence from her husband on a visit, found on her return that he was living with another woman, and thereupon left him and went to live in a different district, and in that district applied for an order for maintenance against her husband:—*Held*, that, the wife being justified in refusing to live with her husband and in choosing her own place of residence, the neglect of her

MAINTENANCE, ORDER OF CRIMINAL COURT AS TO—*concluded.*

husband to maintain her was an offence within the jurisdiction of the appropriate Court at the place were the wife resided.—*In re the Petition of Fakrudin*, I. L. R. 9 Bom. 40, distinguished; *In the matter of the Petition of Todd*, 5 N. W, 237, followed. IN THE MATTER OF THE PETITION OF DE CASTRO.

[I. L. R. 13 All. 348

4.—*Criminal Procedure Code, s.* 488—*Failure to pay process-fees.*] An application for maintenance under Criminal Procedure Code, s. 488, should not be dismissed on the failure on the part of the applicant to comply with an order for payment of process-fees. IN RE PONNAMMAL.

[I. L. R. 16 Mad. 234

5.—*Criminal Procedure Code, ss.* 488, 490—*Order for maintenance of wife—Application by wife to enforce order—Plea that applicant had been divorced—Duty of Court to which application for enforcement is made.*] Where a person in whose favour an order under s. 488 of the Code of Criminal Procedure has been made takes that order before a Magistrate, and the Magistrate finds that he has jurisdiction owing to the residence of the person affected by the order, and is satisfied as to the identity of the parties and the non-payment of the allowance due, it is his duty to enforce the order for maintenance. It is no part of the duty of a Magistrate on such an application as above-mentioned, *viz.*, an application under s. 490 of the Code of Criminal Procedure, to entertain a plea by the party against whom the order is sought to be enforced to the effect that he has divorced the applicant, and is therefore no longer liable to pay maintenance. *Zeb-un-nissa* v. *Mendu Khan*, Weekly Notes, 1885, p. 25, dissented from. MAHBUBAN *v.* FAKIR BAKHSH.

[I. L. R. 15 All. 143

6.—*Criminal Procedure Code, s.* 489—*Maintenance—Variation in rate of.*] A Magistrate has no power under Criminal Procedure Code, s. 489, to make an order for maintenance at a progressively increasing rate, but the fact that the child has grown older might constitute a change in the circumstances calling for a variation in the rate. IN RE RAMAYEE.

[I. L. R. 14 Mad. 398

7.—*Proceedings on application for maintenance—Evidence, record of—Summary trial—Criminal Procedure Code (Act X of* 1882), *ss.* 355 *and* 488—*Procedure.*] Proceedings under Chapter XXXVI of the Code of Criminal Procedure cannot be conducted as in a summary trial under Chapter XXII, but the evidence taken must be recorded as provided by s. 355. KALI DASSI *v.* DURGA CHARAN NAIK.

[I. L. R. 20 Calc. 351

MAJORITY ACT (IX OF 1875).

———, s. 3.

See MINOR—CUSTODY OF MINORS.

[I. L. R. 12 All. 213

MAJORITY ACT (IX OF 1875), s. 3—*concld.*

Minor—Age of majority—Guardian and Manager—Act XL of 1858, *ss.* 4, 7, 12—*Collector—Court—Court of Wards Act (Bengal Act IX of* 1879), *ss.* 7-11, 20, 65.] In a suit to recover money due upon certain promissory notes executed between the 14th December 1885 and the 16th March 1886, the defendant pleaded (*inter alia*) minority, and alleged that by an order of the Civil Court the Collector had been appointed his guardian and manager of his estate under Act XL of 1858; that on the 6th December, when he was nineteen years of age, his estate had been released by the Court of Wards and was made over to his father on the 17th December, that on the 30th December the District Judge held that he was still a minor, and appointed a manager of his estate, and that the District Judge's order had been upheld on appeal by the High Court:—*Held*, that there was no evidence that a guardian of the person or property of the defendant had ever been appointed within the meaning of s. 3 of the Indian Majority Act (IX of 1875), and as the defendant was not under the jurisdiction of the Court of Wards at the time of the execution of the promissory notes, he was then no longer a minor, but *sui juris* and competent to enter into a binding contract. *Held*, that the Collector is not a Court of Justice within the meaning of s. 3 of the Majority Act. A Collector appointed under s. 12 of Act XL of 1858 cannot properly be styled the guardian of a minor's property. *Held*, that under s. 3 of the Majority Act the disability of minority only continues so long as the Court of Wards retains charge of a minor's property and no longer. *Rudra Prokash Misser* v. *Bhola Nath Mookerjee*, I. L. R. 12 Calc. 612, referred to and commented on. BIRJMOHUN LALL *v.* RUDRA PERKASH MISSER.

[I. L. R. 17 Calc. 944

MALABAR COMPENSATION FOR TENANTS' IMPROVEMENT ACT (MADRAS ACT I OF 1887).

———, ss. 1, 2, 4, 5, 6, 7.

See LANDLORD AND TENANT—COMPENSATION FOR IMPROVEMENTS ON LAND.

[I L. R. 13 Mad. 454, 502

MALABAR LAW—ADOPTION.

Adoption by the last member of a Nambudri illom.] In a suit for a declaration that the members of the Nambudri *illom* to which the plaintiffs belonged were the sole heirs and successors of an *illom* known as Kiluvapura, of which the natural line had become extinct, and for possession of certain land which had formed part of its property, the defendants were the *karnavan* and manager of the plaintiffs' *illom* and the members of another *illom*. It was found on the evidence that the plaintiffs' *karnavan* had been adopted unto the Kiluvapura *illom*, and that subsequently that *illom* and the plaintiffs' had been amalgamated under a *karar* executed by, among others, the wife of the last male member of the Kiluvapura *illom*, and

MALABAR LAW—ADOPTION—*concld.*

that she had died before this suit:—*Held*, that the adoption of the plaintiffs' *karnavan* was valid even assuming that no *datta homam* was performed, and the last male member of the Kiluvapura *illom* had died after merely indicating him as his heir, and that the widow adopted him in the Dwayamushyayana form; and that the plaintiffs were entitled to a decree as prayed. SHANKARAN *v.* KESAVAN.

[I. L. R. 15 Mad. 6

MALABAR LAW—CUSTOM.

See MALABAR LAW—INHERITANCE

[I. L. R. 15 Mad. 281

1.—*Qualification of yajaman or manager of the family—Leprosy — Adoption of another person without consent of son who was a leper.*] The last female member of an Aliyasantana family made an adoption without the consent of her son, who was suffering from ulcerous leprosy, which was not congenital:—*Held*, that there was no custom excluding lepers either from management of the family or from inheritance, and that the son was entitled to have the adoption set aside. CHANDU *v.* SUBBA.

[I. L. R. 13 Mad. 209

2.—*Custom of Mapillas—Coparcenary.*] There is no authority for saying that the custom of holding property in coparcenary is a recognized custom among Mapillas in Malabar. KASMI *v.* AYISHAMMA.

[I. L. R 15 Mad. 60

MALABAR LAW—ENDOWMENT.

See PARTIES—ADDING PARTIES TO SUITS —PLAINTIFFS.

[I. L. R. 14 Mad. 489

—*Melkoima — Compromise by Uralers of the right to manage a devasom—Claim of certain uralers to exclude others from management—Limitation.*] The *uraima* right in a Malabar *devasom* was vested in the *illom*, of which plaintiff No. 1, a Nambudri Brahman, was a member; the defendants represented the family which formerly ruled over the tract of country where the *devasom* was situated. The plaintiffs sued for a declaration that their families were entitled to the exclusive management of the affairs of the *devasom*. It appeared that the plaintiffs' and defendants' families had been in joint management since 1845 in accordance with the provisions of a deed of compromise:—*Held*, (1) On its appearing that the compromise had been entered into by the *karnavan* of the plaintiffs' *illom*, and that the compromise was not vitiated by fraud or the like, that the compromise was binding on the plaintiff; (2) That the claim to exclusive management was barred by limitation. A legal origin to which the joint enjoyment of the rights of management may be referred may be found in the continuance of what was *melkoima* in ancient times as a co-trusteeship subsequent to the British rule with the tacit sanction of the British Government, or

MALABAR LAW—ENDOWMENT—*concld.*

in the *status* of the Nambidi family as patrons of the institution. NILAKANDAN *v.* PADMANABHA.

[I. L. R. 14 Mad. 153

MALABAR LAW—GIFT.

Gift of land to a wife and her children—Incidents of tarwad property—Liability to attachment in execution of decree.] Land, which originally belonged to one *T*, was given after his death to one of his wives and her children in accordance with a wish orally expressed by him. He had not expressed any intention as to how it should be held by the donees. It appeared that they were subject to the Marumakkatayam law:—*Held*, by the Full Bench, that they took the land with the incidents of property held by a *tarwad*. *Narayanan* v. *Kannan*, I. L. R. 7 Mad. 315, dissented from. *Held*, by the Division Court accordingly, that a decree against the assets of one of the sons could not be executed against the land as a whole or against his share in it. KUNHACHA UMMA *v.* KUTTI MAMMI HAJEE.

[I. L. R. 16 Mad. 201

MOIDIN *v.* AMBU.

[I. L. R. 16 Mad. 203 note

Contra: PARVATHI *v.* KORAN.

[I. L. R. 16 Mad. 202

MALABAR LAW—INHERITANCE.

1.—*Exclusion from inheritance—Aliyasantana law—Uncongenital insanity.*] A Jain, who was subject to the Aliyasantana law, made a will, whereby he disposed of the property of his family in favour of certain persons, and died. The plaintiff, a female, was the sole surviving member of the testator's family, but it was admitted that she was, and for more than fifty years had been, a lunatic, though she had not been declared to be so under Act XXXV of 1858; it appeared that her lunacy was not congenital. She sued, by the Collector of South Canara, the Agent for the Court of Wards:—*Held*, that the plaintiff was not excluded from inheritance by reason of lunacy under Aliyasantana law, and the will in favour of the defendants was invalid. SANKU *v.* PUTTAMMA.

[I. L. R. 14 Mad. 289

2.—*Makkatayam rule of inheritance—Custom of Tiyars in South Malabar.*] A community, following the Makkatayam rule, must not be taken to be necessarily governed by the Hindu law of inheritance with all its incidents:—Accordingly, when a member of the Tiyar community in Calicut following that rule, alleged and proved a custom that brothers succeeded to self-acquired property in preference to widows, it was held that the Court should give effect to it. RARICHAN *v.* PERACHI.

[I. L. R. 15 Mad. 281

MALABAR LAW—JOINT FAMILY.

1.—*Suit to remove a karnavan for mismanagement as de facto karnavan.*] A suit was brought to remove *A* the *karnavan de jure* of a Malabar

tarwad from office on the grounds of mismanagement of *tarwad* property. The acts of mismanagement complained of were really done by *B* as *karnavan de facto*. The above suit was withdrawn with leave to sue again. *A* died, and was succeeded by *B*, against whom the plaintiffs brought a suit, to which all the adult but none of the minor members of the *tarwad* were made parties, to obtain his removal from the office of *karnavan* alleging against him the acts of mismanagement above referred to:—*Held*, that the grounds alleged supported the action. The fact that the misfeasances were committed when *B* was *de facto* and not *de jure karnavan* did not make them the less a ground for removing him from his office of *de jure karnavan*. *Held* also, that the minor members of the *tarwad* were sufficiently represented on the record. KUNHAN *v.* SANKARA.

[I. L. R. 14 Mad. 78

2.—*Suit by junior members of a tarwad—Suit to restrain execution of a decree obtained in a suit against plaintiffs' karnavan—Right of suit.*] In a suit brought in a Subordinate Court by the junior members of a Malabar *tarwad* against their *karnavan* and others, the plaintiffs prayed for a declaration of the *uraima* right of their *tarwad* in a certain *devasom*, and for an injunction to restrain the defendants, other than the members of the plaintiffs' *tarwad*, from executing a decree of a District Court, passed on appeal from a Munsif's Court, whereby certain lands of the *devasom* were decreed to be surrendered to them in the character of *uralers;* it appeared (1) that plaintiffs' *karnavan* was a party to the suit in which the above-mentioned decree was passed; (2) that the plaintiffs' *tarwad* was otherwise entitled to the *uraima* right by adverse possession, if not immemorial title:—*Held*, that the plaintiffs were entitled to maintain the suit without proof of fraud and collusion on the part of their *karnavan* in the previous suit; and that they were entitled to the decree as prayed. APPU *v.* RAMAN.

[I. L. R. 14 Mad. 425

3.—*Former decrees against karnavan — Civil Procedure Code, s.* 13 — *Limitation Act* (*XV of* 1877), *Sch. II, Arts.* 91, 120—"*Res judicata.*"] In a suit for a declaration that the members of the Nambudri *illom* to which the plaintiffs belonged were the sole heirs and successors of an *illom* known as Kiluvapura, of which the natural line had become extinct, and for possession of certain land which had formed part of its property, the defendants were the *karnavan* and manager of the plaintiffs' *illom* and the members of another *illom*. It was found on the evidence that the plaintiffs' *karnavan* had been adopted unto the Kiluvapura *illom*, and that subsequently that *illom* and the plaintiffs' had been amalgamated under a *karar* executed by, among others, the wife of the last male member of the Kiluvapura *illom*, and that she had died less than twelve years before this suit. The defendants, other than the *karnavan* and manager of the plaintiffs' *illom*, asserted a right to a moiety of the property of the Kiluvapura *illom* (with which, however, it was now found on

the evidence that they were less closely connected than the plaintiffs), and it appeared that that right had been similarly asserted in suits brought after the date of the *karar* above referred to, by a member of the defendants' *illom* against the *karnavan* and manager of the plaintiffs' *illom*, and that decrees had been passed therein negativing the title now set up by the plaintiffs, and that part of the property now claimed was held under one of those decrees. The plaintiffs did not ask that those decrees should be set aside:—*Held* (1) that the suit was not barred by limitation either under Art. 91 or Art. 120 of the Limitation Act; (2) that it was unnecessary for the plaintiffs to prove *mala fides* against their *karnavan* in respect of his conduct in the former suits or to seek that the decrees passed therein be set aside, and that those decrees did not constitute the present claim *res judicata*, as the *karnavan* was not then impleaded in his capacity as such; and (3) that the plaintiffs were entitled to a decree as prayed. SHANKARAN *v.* KESAVAN.

[I. L. R. 15 Mad. 6

4.—*Customary law of Mapillas—Multifariousness—Suit by karnavan — Right of suit.*] The plaintiff sued as the *karnavan* of a Mapilla *tarwad* to recover lands in the possession of the defendants who were a donee from and the descendants of a previous *karnavan* and their tenants. It appeared that the alleged previous *karnavan* had died less than twelve years before the suit was filed, but more than twelve years before the joinder, as a supplemental defendant, of one to whom he had conveyed certain property by way of gift five years before his death. An issue was raised as to whether the rights of the parties were governed by Makkatayam or Marumakkatayam law, and an order of a District Munsif, reciting a petition to which the alleged previous *karnavan* was a party, was put in evidence to show that he had in a particular instance acted in the capacity of *karnavan* of a Marumakkatayam *tarwad:—Held* (1) that on the allegations in the plaint the plaintiff was entitled to maintain the suit alone, and that the suit was not bad for multifariousness; (2) *on the evidence*, that the plaintiff had succeeded to the office of the previous *karnavan* as alleged, and that the previous *karnavan* had followed the Marumakkatayam rule, although it was shown that other members of the family had dealt with property, described as self-acquired, under the precepts of Mahomedan law. BYATHAMMA *v.* AVULLA.

[I. L. R. 15 Mad. 19

5.—*Karnavan, powers of—Perpetual lease.*] The *karnavan* of a Malabar *kovillagom* executed a *kuikanom* lease of certain land, the *jenm* of the *kovilagom*, in 1846, and in 1861 his successor demised the same land to the same tenants in perpetuity. The present *karnavan* sued in 1889 to recover possession of the land:—*Held*, that the perpetual lease, as being of an improvident character, was *ultra vires* and void; and (2) that the original lease was not surrendered by the acceptance of the subsequent lease. RAMUNNI *v.* KERALA VARMA VALIA RAJA.

[I. L. R. 15 Mad. 166

MALABAR LAW—JOINT FAMILY—*concld.*

6.—*Nambudri—Karnavan, decree against—Sale in execution of decree.*] A junior member of a Nambudri *illom*, of which he was held out as the manager and *de facto karnavan*, contracted a debt for the purposes of the *illom*. The creditor sued him on the debt, but did not implead him as *karnavan*, and, having obtained a personal decree, attached and brought to sale in execution property belonging to the *illom*. A son of the judgment-debtor now sued to set aside the sale:—*Held*, that the sale should be set aside. GOVINDA *v.* KRISHNAN.

[I. L. R. 15 Mad. 333

7.—*Karnavan, disqualification for office of—Blindness.*] A blind man sued, as the *karnavan* of a Malabar *tarwad*, to recover certain land. One of the defendants, who claimed but was not admitted to be a member of the *tarwad*, and who asserted a right as *kanomdar* to the land in question, pleaded that the plaintiff was not competent to act as *karnavan*, or consequently to maintain the suit, by reason of his blindness:—*Held*, that it was for the members of the *tarwad* to take this objection as if they wish a blind man to act as their *karnavan* he can do so; the defendant therefore was not entitled to raise this plea. UKKANDAN *v.* KUNHUNNI.

[I. L. R. 15 Mad. 483

8.—*The Valiya Rajah of a kovilagom sued as such—Liability of kovilagom properties.*] *Semble*:—That a decree passed against the Valiya Rajah of a *kovilagom* is *primâ facie* binding upon his successor and his *kovilagom*. KERALA VARMA VALIYA RAJAH *v.* SHANGARAM.

[I. L. R. 16 Mad. 452

9.—*Aliyasantana law — Unjustified alienation of family property by a member of undivided family — Partition, right of — Adverse possession — Limitation.*] In 1851 the *ejaman* of an Aliyasantana family mortgaged family property to the ancestor of some of the defendants who and whose alienees were now in possession. The mortgagor died leaving besides one brother, two sisters, each having a son—the family remaining undivided. In 1856 one of the sons, with the concurrence of his uncle and mother, conveyed the land to the mortgagee, but this transaction was not justified by any family necessity; and in 1857 the other son and his mother sold their undivided moiety to the plaintiff's predecessor in title. In a suit to redeem the mortgage of 1851, the plaintiff obtained a decree for redemption of a moiety of the mortgaged property:—*Held* that, although it may have been supposed in 1857 that compulsory partition was permitted by the Aliyasantana law, yet as the right to the half share purported to be sold in 1857 had no legal existence, nothing could pass by that sale, and the suit should be dismissed. Neither the original mortgagee nor his son could rely on the twelve years' rule of limitation unless he could prove a subsequent valid sale, in the absence of which his possession must be taken to retain its original character. BYARI *v.* PUTTANNA.

[I. L. R. 14 Mad. 38

MALABAR LAW—MORTGAGE.

1.—*Kanom mortgage—Redemption suit brought within twelve years from the date of kanom—Special stipulation for redemption.*] In a suit to redeem a *kanom* executed less than twelve years before suit it appeared that the *kanom* instrument provided for the surrender of the property "if at any time the property should be necessary" for the *jenmi*. It was found that no special exigency had been established by the plaintiff:—*Held*, on the above finding, that the special stipulation did not *oust* the general rule that the *kanom* was not redeemable for twelve years, and the suit was therefore premature. MAHOMED *v.* ALI KOYA.

[I. L. R. 14 Mad. 76

2.—*Transfer of interest — Appointment of a creditor as agent to collect rents and appropriate part towards the debt—Mortgagee in possession—Usufructuary mortgage.*] In a suit to redeem a *kanom* on certain land, the *jenm* of a *devasom* in Malabar, it appeared that the plaintiff held a *melkanom* in respect of the same land executed to him (subsequently to the date of the *kanom* sought to be redeemed) by defendant No. 3, the *samudayam* of the *devasom*. Defendant No. 3 represented one *C*, in whose favour the *uralers* had, in 1741, executed a document appointing him *samudayam* and stating that they had received from him a *kan m* of 18,000 *fanams* on the *devasom* properties and providing that he should appropriate part of the rents towards the loan. It appeared that in a suit to eject tenants, the *uralers* had sued as co-plaintiffs with the *samudayam:* in subsequent suits, however, two of the *uralers* had sued other tenants for rent and the *samudayam* for an account; both of these suits were dismissed on second appeal, and in the judgments of the High Court the *samudayam* was described as a mortgagee in possession:—*Held*, in view of the conduct of the parties and on the terms of the document of 1741, that the *samudayam* was not thereby constituted a mortgagee in possession, and the *melkanom* set up by the plaintiff was invalid. KRISHNAN *v.* VELOO.

[I. L. R. 14 Mad. 301

3.—*Limitation—Creditor of a devasom placed in possession as samudayam.*] In a suit brought by the *uralers* of a *devasom* in Malabar to recover certain land in the possession of the defendant, it appeared that the defendant held under an instrument, dated 1741, whereby his predecessor in title was appointed *samudayam* and was authorised to appropriate part of the rents of the *devasom* properties to the interest on a loan made by him to the *uralers*. Two of these *uralers* had brought a previous suit against the defendant for an account of the rents received by him and for an injunction: that suit was dismissed on second appeal when the High Court described the defendant as a mortgagee in possession, but the question whether or not he was a mortgagee with or without possession was not then directly and substantially in issue:—*Held*, that the Court having held, following *Krishnan v. Veloo*, I. L. R. 14 Mad. 301, that the defendant was not a

MALABAR LAW—MORTGAGE—*continued.*

mortgagee in possession under the instrument of 1741, the suit was not barred by limitation. RAMAN *v.* SHATHANATHAN.

[I. L. R. 14 Mad. 312

4.—*Transfer of Property Act* (*IV of* 1882), *s.* 60 —*Partial redemption—Indivisibility of mortgage.*] The *karnavan* of a Malabar *tarwad*, having the *jenm* title to certain land and holding the *uraima* right in a certain public *devasom* to which other land belonged, demised lands of both description on *kanom* to the defendants' *tarwad*, and subsequently executed to the plaintiff a *melkanom* of the first-mentioned land and purported to sell to him the *jenm* title to the last-mentioned land. In a suit brought by the plaintiff to redeem the *kanom* and to recover arrears of rent:—*Held*, that the defendants were not estopped from denying the plaintiff's right to redeem on the ground that he did not represent the *devasom*, and that the plaintiff who had denied the title of the *devasom* in the Court of First Instance, was not entitled to redeem the *kanom* as a whole, by virtue of his admitted title to part of the premises comprised in it. KONNA PANIKAR *v.* KARUNAKARA.

[I. L. R. 16 Mad. 328

5.—*Otti mortgage—Right of pre-emption under otti—Waiver—Limitation Act* (*XV of* 1877), *s.* 28.] A *jenmi* having demised certain land in Malabar on *otti* to defendant No. 3 in 1869, sold the *jenm* title to the plaintiff and defendants Nos. 1 and 2 in 1886. In 1888 defendant No. 3 made a further advance to, and obtained a renewed demise from, defendants Nos. 1 and 2. The plaintiff sued more than six years after the sale to recover his share (defendant No. 3 being in possession) on payment of one-third of the *otti* amount:—*Held*, that (whether or not the suit was maintainable as framed) the third defendant had a right of pre-emption as *ottidar*, which had not been waived by him and was not barred by limitation, and which constituted a good defence to the suit. KANHARANKUTTI *v.* UTHOTTI.

[I. L. R. 13 Mad. 490

6.—*Otti mortgage—Ottidar's right of pre-emption—Suit to redeem kanom.*] In a suit to redeem a *kanom* of 1874, it was found that the plaintiff's predecessor in title had purchased the *jenm* title to the land in question at a sale held in execution of a decree which was binding on the *jenmi's tarwad*; but it appeared that the defendant (the *kanomdar*) held an *otti* on the land, dated 1870, and had not waived his right of pre-emption as *ottidar*. A decree was passed providing for payment by the defendant of the purchase-money to the plaintiff, and the execution by the latter of a conveyance, and in default for redemption by the plaintiff on his paying to defendant the amount of the *otti*:—*Held*, that the decree was right. UKKU *v.* KUTTI.

[I. L. R. 15 Mad. 401

7.—*Otti mortgage—Ottidar's right of pre-emption—Waiver—Election not to purchase.*] An *ottidar* in Malabar loses his right of pre-emption

MALABAR LAW—MORTGAGE—*concluded.*

if he refuses to bid at a Court-sale of the land comprised in his *otti* held in execution of a decree against the *karnavan* and senior *anandravan* of the *tarwad* in which the *jenm* right is vested, after having been specially invited to attend and exercise that right, and makes no offer to take the property for a long time after the Court-sale. AMMOTTI HAJI *v.* KUNHAYEN KUTTI.

[I. L. R. 15 Mad. 480

MALABAR LAW—WILL.

Will by member of Malabar tarwad—Validity of will.] *Quære*—Whether the principle laid down in *Alami* v. *Komil*, I. L. R. 12 Mad. 126, would apply in the case of a will made by a member of a Malabar *tarwad* having heirs in the *tarwad*. KUTTYASSAN *v.* MAYAN.

[I. L. R. 14 Mad. 495

MALICIOUS PROSECUTION.

See MADRAS LOCAL BOARDS ACT, S. 128.

[I. L. R. 13 Mad. 442

———, Suit for damages for—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION — DAMAGES, SUITS FOR.

[I L. R. 14 Bom. 100

—*Absence of probable cause—Malice, proof of—Burden of proof.*] In a suit for damages for malicious prosecution it was found that the charge brought by the defendant against the plaintiff was unfounded, and that it was brought without probable cause:—*Held*, that the absence of probable cause did not imply malice in law, and that, on the failure of the plaintiff to prove that the defendant did not honestly believe in the charge brought by him, the suit should have been dismissed. HALL *v.* VENKATAKRISHNA.

[I. L. R. 13 Mad. 394

MALIKANA.

See MUNSIF, JURISDICTION OF.

[I. L. R. 19 Calc. 8

MAMLATDAR.

See LAND ACQUISITION ACT, S. 19.

[I. L. R. 17 Bom. 299

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

[I. L. R. 17 Bom. 299

———, Order of, as to possession.

See LIMITATION ACT, 1877, ART. 47.

[I. L. R. 15 Bom. 299

MAMLATDAR, JURISDICTION OF.

1.—*Effect of order of Mamlatdar as to possession—Act XVI of* 1838, *s.* 1, *cl.* 2—*Mamlatdar's Court a Revenue Court within contemplation of Bombay Regulation* (*XVII of* 1827) — *Maxim, "Optimus legis interpres consuetudo," application of—Remedy when suit to set aside order as to possession is barred—Title, suit based on.*] On the 13th December 1863, prior to the passing of the Mamlatdars Act (III of 1876), one *B* sued defendants 1 and 2 in a Mamlatdar's Court for the purpose of restraining them from disturbing him in the possession and enjoyment of the lands in dispute. On the 17th January 1864, the Mamlatdar made an order to that effect against the said defendants, who omitted to sue to set aside that order. In 1866, *B* being then dead, his widow (defendant 3) executed in favour of the plaintiff a *miraspatra* in respect of the lands in dispute, which was also ratified by her adopted son (defendant 4). In 1871 the plaintiff sued to recover possession of the lands. Defendants 1 and 2 contended (*inter alia*) that the lands were their private property and had never been in the possession of *B* or his widow. The suit went up to the High Court, and was remanded for the determination of the issues, *viz.* (1) whether *B* had at the time of his death such a title to the lands as would have entitled him to make a *mirasi* lease thereof, and (2) whether there was any valid adoption of defendant 4 by defendant 3. On remand the Court of First Instance found on the issues in the affirmative, being of opinion that defendant 3 was in possession at the time the *miraspatra* was executed to the plaintiff. The defendants appealed, and the Subordinate Judge, confirmed the lower Court's decree. He treated the Mamlatdar's order as one made under the Mamlatdars Act, and, as such, binding conclusively on the defendants, as it had not been set aside within three years from its date. On appeal to the High Court, *held*, that the Subordinate Judge with appellate powers was wrong in treating the Mamlatdar's order as passed under the Mamlatdars Act. The order was one of a Revenue Court under s. 1, cl. 2 of Act XVI of 1838. It was contended that the Mamlatdar could not make such an order under Act XVI of 1838:—*Held*, that although the Collector's Court was the only Revenue Court contemplated by Regulation XVII of 1827, since the passing of Act XVI of 1838, the Mamlatdar's Court was always regarded as a Revenue Court empowered to deal with a claim to possession, and that in construing that Act the maxim "*optimus legis interpres consuetudo*" might be properly applied. The order in question was against the appellant, and under s. 7 of Act XIV of 1859 a suit by the appellant to recover the property would be barred on the 17th January 1867, and as that suit was not brought, the defendants could not assert a title other than what their actual possession might afford them. The Subordinate Judge having found that defendant 3 was in possession in 1886 when she granted the *miraspatra*, the appellant could not have acquired any title by possession before the plaintiff's suit in 1871. BAPU KHANDU *v.* BAJI JIVAJI.

[I. L. R. 14 Bom. 372

MAMLATDAR, JURISDICTION OF—*concluded.*

2.—*Code of Civil Procedure* (*Act XIV of* 1882), *Ch. XXI, ss.* 361 — 372, *applicability to a suit in a Mamlatdar's Court—Procedure—Parties, substitution of.*] The Bombay Mamlatdars Act (III of 1876) makes no provision for the substitution of the names of heirs in the case of the death of one of the parties, and Ch. XXI of the Code of Civil Procedure (Act XIV of 1882) cannot be held to apply to proceedings in a Mamlatdar's Court. Accordingly, where a possessory suit was filed by two persons in a Mamlatdar's Court, and one of them died pending the suit, and it appeared that the right to sue did not survive to the surviving plaintiff alone:—*Held*, that the Mamlatdar having therefore no jurisdiction to substitute parties had no alternative but to dismiss the suit. GANPATRAM JEBHAI *v.* RANCHHOD HARIBHAI.

[I. L. R. 17 Bom. 645

MAMLATDARS COURTS ACT (BOMBAY ACT III OF 1876).

See CASES UNDER MAMLATDAR, JURISDICTION OF.

See SPECIFIC RELIEF ACT, S. 9.

[I. L. R. 15 Bom. 685

—*Mamlatdar's decree, by whom it may be questioned—Reference to High Court by Collector—Practice—Procedure—Right of suit.*] A party aggrieved by a Mamlatdar's decree may apply to the High Court to set it aside, or may question its validity by a suit in a Civil Court. But where a Collector referred the record and proceedings in a case decided by a Mamlatdar under Bombay Act III of 1876, in order that the decree might be set aside as *ultra vires*, the High Court declined to interfere. VORA ISABALLI *v.* DAUDBHAI MUSABHAI.

[I. L. R. 14 Bom. 371

———, S. 4.

See S. 17.

[I. L. R. 16 Bom. 238

1.—S. 4.—*Award of partial claim—Injunction—Practice.*] The plaintiff's suit to have the defendants restrained by injunction from causing disturbance to him in cultivating his fields was rejected by the Mamlatdar, on the ground that his allegations were not proved against all the defendants, one of the defendants having been found not to have disturbed the plaintiff:—*Held*, reversing the order of the Mamlatdar, that there was nothing in the Mamlatdars Act to prevent the Mamlatdar from granting the injunction as against the defendants against whom the case was proved. The High Court directed an injunction to go under s. 4 of the Mamlatdars Act, restraining the said defendants from causing the alleged disturbance to the plaintiff. CHINTAMANRAV NARAYAN GOLE *v.* BALA.

[I. L. R. 14 Bom. 17

2.—S. 4, cl. 2— *Injunction — Possession—Constructive possession—Landlord and tenant.*] A landlord who has only a constructive possession of

MAMLATDARS COURTS ACT (BOMBAY ACT III OF 1876), s. 4—*concluded.*

lands through his tenant, cannot obtain relief by way of injunction under cl. 2 of s. 4 of the Mamlatdars Act (Bombay Act III of 1876). *Desai Malabhai Bapubhai* v. *Keshavbhai Kuberbhai* I. L. R. 12 Bom. 419, followed. NEMAVA *v.* DEVANDRAPPA.

[I. L. R. 15 Bom. 177

——, s. 8.—*Amendment of plaint—Mamlatdar's power to order a plan to be appended to the plaint.*] In a possessory suit filed under Bombay Act III of 1876 the Mamlatdar has no power to order the plaintiff to append a plan to the plaint, showing the situation of the property in dispute. If the plaint is defective in its statement of the necessary particulars as to the nature and situation of the property, the amendment contemplated by the Act is an amendment in writing on the face of the plaint. CHENBASAYA *v.* RUDRAPA.

[I. L. R. 14 Bom. 581

1.—s. 17.—*Decree for possession—Obstruction to execution of decree—Power to use force in execution of decree.*] When a Mamlatdar passes a decree for possession, it is his duty, under s. 17 of Bombay Act III of 1876, not merely to issue orders to the village officers to execute the decree, but also to see that effect is really given to his decision. For this purpose he may use force, if necessary, to eject the person against whom the decree is passed. SHANKAR RAMLAL DIKSHIT *v.* MARTANDRAO BHAU TIPNIS.

[I. L. R. 14 Bom. 157

2.—s. 17, and s. 4.—*Mamlatdar's power to levy costs — Costs of litigation in High Court.*] A Mamlatdar acting under s. 4 of Bombay Act III of 1876 issued an injunction to *A*, restraining him from obstructing *B's* possession of certain land. On *A's* application, the High Court, in the exercise of its revisional jurisdiction, set aside the injunction order, and directed *B* to pay *A's* costs of the application. *A* thereupon applied to the Mamlatdar to levy the costs decreed by the High Court. The Mamlatdar rejected the application for want of jurisdiction:—*Held*, that under s. 17 of Bombay Act III of 1876 the Mamlatdar had the same power to levy costs decreed by the High Court as he had regarding costs decreed in his own Court. The litigation in the High Court was a continuation of the suit in the Mamlatdar's Court, and any costs incurred were subject to the rules laid down in the Act. NEMAVA *v.* DEVANDRAPPA.

[I. L. R. 16 Bom. 238

MANAGER.

See BENGAL TENANCY ACT, s. 93.

[I. L. R. 20 Calc. 881

—— of Hindu widow's estate.

See RECEIVER.

[I. L. R. 13 Mad. 390

MANAGER—*continued.*

—— of joint-family.

See CASES UNDER HINDU LAW—JOINT FAMILY.

See HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION.

[I. L. R. 17 Bom. 271

See LIMITATION ACT, 1877, s. 19.

[I. L. R. 17 Bom. 512

See LIMITATION ACT, 1877, ART. 107.

[I. L. R. 20 Calc. 18

See CASES UNDER MALABAR LAW—JOINT FAMILY.

—— of saranjam.

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R. 15 Bom. 247

—— of ward's estate.

See COURT OF WARDS ACT, s. 20.

[I. L. R. 18 Calc. 500

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 13 Mad. 197

—— of temple.

See HINDU LAW—ENDOWMENT—DISMISSAL OF MANAGER.

[I. L. R. 13 Mad. 6

[I. L. R. 15 Mad. 44

MAPILLAS.

See MALABAR LAW—CUSTOM.

[I. L. R. 15 Mad. 60

See MALABAR LAW—JOINT FAMILY.

[I. L. R. 15 Mad. 19

MARGINAL NOTES TO ACTS.

See STATUTES, CONSTRUCTION OF.

[I. L. R. 20 Calc. 609

MARKET, LICENSE FOR.

See BENGAL MUNICIPAL ACT, 1884, s. 337.

[I. L. R. 20 Calc. 654

MARRIAGE.

See BIGAMY.

[I. L. R. 18 Calc. 264

[I. L. R. 19 Calc. 79, 627

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY

[I. L. R. 13 Mad. 83

[I. L. R. 16 Bom. 673

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED.

[I. L. R. 13 Mad. 128

MARRIAGE—*continued.*

See HINDU LAW — INHERITANCE — DIVESTING OF, EXCLUSION FROM, AND FORFEITURE OF, INHERITANCE—MARRIAGE.

[I. L. R. 19 Calc. 289

See HINDU LAW—MARRIAGE.

See JURISDICTION OF CIVIL COURT—CASTE.

[I. L. R. 13 Mad. 293

See PARSIS.

[I. L. R. 17 Bom. 146

——, Dissolution of—

See DIVORCE ACT, S. 2.

[I. L. R. 18 Calc. 252

See DIVORCE ACT, S. 14.

[I. L. R. 17 Bom. 624

——, Expenses of—

See HINDU LAW — INHERITANCE—IMPARTIBLE PROPERTY.

[I. L. R. 16 Mad. 54

——, Proof of—

See DIVORCE ACT.

[I. L. R. 16 Mad. 455

See WILL—CONSTRUCTION.

[I. L. R. 13 Mad. 379

——, Repudiation of—

See BIGAMY.

[I. L. R. 19 Calc. 79

——, Right to officiate at—

See RIGHT OF SUIT—OFFICE OR EMOLUMENT.

[I. L. R. 14 Bom. 167

——, Validity of—

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.

[I. L. R. 16 Bom. 136

1.—*Validity of marriage—Suit for nullity of marriage—Divorce Act (IV of* 1869), *ss.* 18, 19 (2)—*Domicile of origin—Religious communion.*] Where the petitioner, a member of the Church of England, came to India about the year 1867, his domicile of origin being then English, and in 1871 married the illegitimate sister (since deceased) of his second wife, whom he subsequently married in 1887, it being uncertain what his domicile was at the date of his first marriage:—*Held*, in a suit for nullity of marriage, that either the petitioner carried with him to India the laws as to capacity to marry by which he was originally governed, or he was governed by the law of the class to which he belonged, and that in either case the marriage could not be supported. *Lopez* v. *Lopez*, I. L. R. 12 Calc. 706, referred to and applied. HILLIARD *v.* MITCHELL.

[I. L. R. 17 Calc. 324

MARRIAGE—*concluded.*

2.—*Suit by wife for nullity of marriage—General and relative impotency—Impotency quoad hanc—Parsi Marriage Act (XV of* 1865), *s.* 28.] In March 1882 the plaintiff and defendant, Parsis, were married according to the rites and ceremonies of their religion. In October 1882 the plaintiff attained puberty, and for seventeen months from that time she lived with the defendant in his parents' house; but there was no consummation of the marriage. There was no physical defect in either plaintiff or defendant, nor any unwillingness in the plaintiff to consummate the marriage; but the defendant had always entertained such hatred and disgust for the plaintiff as to result, in the opinion of the medical experts, in an incurable impotency in the defendant *as regards the plaintiff*. The delegates unanimously found, on the evidence, that the consummation of this marriage had from its commencement been impossible; because the defendant was, from a physical cause, namely impotency as regards the plaintiff, unable to effect consummation. They also found that there was no collusion or connivance between the parties:—*Held*, on this finding, that such impotency *quoad* the plaintiff must be regarded as one of the causes going to make consummation of a marriage impossible under s. 28 of Act XV of 1865, there being nothing in the Act to suggest a contrary opinion. The observations of DR. LUSHINGTON and of LORD WATSON in *G.* v. *M.*, L. R. 10 A. C. 171, as to impotency *quoad hanc* and practical impossibility of consummation, approved and followed. *S.* v. *B.*

[I. L. R. 16 Bom. 639

MARRIAGE ACT (CHRISTIAN) (XV OF 1872).

——, s. 68, and s. 5.—*Marriage solemnised by an unauthorised person—"Knowingly"—Presence of a Marriage Registrar.*] The lay trustee of a church in which the banns of marriage between Christians had been published, solemnised a marriage between them according to the rites of the Church of England. The Marriage Registrar attended the ceremony in a private and unofficial capacity. The person who solemnised the marriage was not of any of the classes of persons authorised to solemnise a marriage in the absence of a Marriage Registrar, and he was convicted of an offence under Act XV of 1872, s. 68:—*Held*, that the conviction was right. QUEEN-EMPRESS *v.* FISCHER.

[I. L. R. 14 Mad. 342

MARRIED WOMAN.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 17 Calc. 488

MASSES, TRUST FOR.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 424

MASTER AND SERVANT.

Liability of master for servant's act—Offer of money by defendant to avoid litigation—Suit for damages.] The servant of the defendant, who

MASTER AND SERVANT—*concluded.*

was staying in the plaintiff's hotel, broke a filter, the property of the plaintiff. In a suit by the plaintiff for damages it appeared that the servant, when he broke the filter, was not acting within the scope of his employment, nor on the defendant's business, or for his benefit. The defendant offered to the plaintiff as compensation Rs. 30 (which was refused), but without acknowledging any liability:—*Held* (1) that the defendant was not liable for the act of his servant; (2) that the plaintiff was not entitled to a decree for Rs. 30. GRAY *v.* FIDDIAN.

[I. L. R. 15 Mad. 73

MAXIM.

——, De minimis non curat lex.

See DEFAMATION.

[I. L. R. 13 Mad. 34

——, Optimus legis interpres consuetudo.

See MAMLATDAR, JURISDICTION OF.

[I. L. R. 14 Bom. 372

——, Quod fieri non debuit, factum valet.

See HINDU LAW— ADOPTION—REQUISITES FOR ADOPTION—AUTHORITY.

[I. L. R. 12 All. 328

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT BE ADOPTED.

[I. L. R. 14 All. 67

MEASUREMENT OF LAND, STANDARD MEASURE OF DISTRICT FOR.

See BENGAL TENANCY ACT, s. 158.

[I. L. R. 17 Calc. 277

MERCHANT SHIPPING ACT, 1854 (17 and 18 VICT., C. 104).

——, ss. 24, 26.—*Applicability of Act to India as regards the rules of measurement—Act XIX of* 1838, *ss.* 4, 13—*Act X of* 1841—*Temporary additions to open vessels—"Strake," Meaning of the term —Rules of measurement made by the Marine Department in* 1873.] The Merchant Shipping Act of 1854 (17 and 18 Vict., c. 104), applies, as regards the rules of measurement, to the whole of Her Majesty's dominions, and is law in India so far as it is not superseded by local legislation; Acts XIX of 1838 and X of 1841 do not conflict with it. The accused was the owner of a vessel registered under Act XIX of 1838, as being of $163\frac{49}{100}$ tons. In the course of a voyage the vessel's bulwarks were raised by an additional structure of a temporary character for the purpose of protecting the cargo from the sea. During this voyage the vessel was measured by a coast-guard inspector, who, following the rules of measurement issued by the Marine Department in 1873, which provide that the measurements must be taken from the top of the highest strake, temporary or otherwise, found an increase of 27 tons in the burthen of the vessel by reason of the temporary structure. This change in the burthen of the vessel having been made, the accused was prosecuted, under s. 13 of Act XIX of 1838, for omitting to register the vessel anew, and obtain a fresh certificate of registry under s. 4 of the Act. The accused was convicted and sentenced to pay a fine of Rs. 33-12:—*Held*, reversing the conviction and sentence, that there being no express provision applicable to temporary additions to open vessels either in the Indian Acts (XIX of 1838 and X of 1841), or in the Merchant Shipping Act of 1854, the rules of measurement issued in 1873 by the Marine Department were *ultra vires*, so far as they insisted on the measurement being taken from the top of a *temporary* addition to the upper strake. *Held* also, that the additional structure put up by the accused being only of a temporary character, to be removed at the end of the voyage, did not come within the meaning of "strake," which is a structural portion of the vessel defined as a "continuous line of plank ing or plates on a vessel's side reaching from stem to stern." QUEEN-EMPRESS *v.* JAMUDIN.

[I. L. R. 14 Bom. 170

MERGER.

See MORTGAGE—MARSHALLING.

[I. L. R. 13 Mad. 383
[I. L. R. 15 Mad. 268

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRATION OF TERM.

[I. L. R. 14 Bom. 78

See MORTGAGE—SALE OF MORTGAGED PROPERTY — RIGHTS OF MORTGAGEES.

[I. L. R. 16 Mad. 94

Putni interest, merger of, in that of zemindar—Co-sharers—Rent, suit for—Land Registration Act (Bengal Act VII of 1876, *s.* 78.] The doctrine of merger does not apply to the case of a *putni* interest coming into the same hands as the zemindari interest. *A* and *B*, two joint zemindars, having brought a *putni* within their zemindari to sale for arrears of rent, purchased it themselves. During the existence of the *putni* a *dur-putni* had been created, of which *C* was in possession. *A* instituted a suit against *C* to recover arrears of rent of the *dur-putni* for a period of three years, setting up his claim thereto both as zemindar and *putnidar*, and joined *B* as a *pro formâ* defendant, alleging that he was away from home at the time of the institution of the suit and could not therefore join as a co-plaintiff. It appeared that *A's* proprietary interest was registered under the provisions of Bengal Act VII of 1876 (the Land Registration Act), but that *B's* interest had not been so registered. Prior to the suit coming on for hearing, *B* was transferred from the category of defendant in the suit into that of co-plaintiff. In answer to the suit *C* contended that the non-registration of *B's* interest precluded the plaintiffs from maintaining the suit at all, *A's* share not being specified, having regard to the provision of

s. 78 of the Act. The lower Appellate Court having dismissed the suit on this latter ground (among others):—*Held*, on second appeal, that the right of the plaintiffs as *putnidars* did not merge in their right as zemindars, and that the Land Registration Act had therefore no application to the case, the plaintiffs being entitled to maintain the suit, *qua putnidars*. JIBANTI NATH KHAN *v.* GOKOOL CHUNDER CHOWDRY.

[I. L. R. 19 Calc. 760

MESNE PROFITS.

Col.

1. Mode of Assessment and Calculation 718

See DECREE—FORM OF DECREE—POSSESSION.

[I. L. R. 14 All. 431

See EXECUTION OF DECREE — ORDERS AND DECREES OF PRIVY COUNCIL.

[I. L. R. 15 Mad. 203

See VALUATION OF SUIT—SUITS.

[I. L. R. 17 Bom. 41

——, Ascertainment of—

See LIMITATION ACT, 1877, ART. 178.

[I. L. R. 19 Calc. 132

See MUNSIF, JURISDICTION OF.

[I. L. R. 21 Calc. 550

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 17 Bom. 35

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 19 Calc. 159

——, Decree for, and for ejectment.

See VALUATION OF SUIT—APPEALS.

[I. L. R. 16 Mad. 310

——, Execution of decree for—

See EXECUTION OF DECREE—EXECUTION BY OR AGAINST REPRESENTATIVES.

[I. L. R. 13 All. 53

See VALUATION OF SUIT—SUITS.

[I. L. R. 15 Bom. 416

——, Suit for—

See LIMITATION ACT, 1877, ART. 178.

[I. L. R. 21 Calc. 259

See RES JUDICATA—RELIEF NOT GRANTED.

[I. L. R. 14 Mad. 328

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MESNE PROFITS.

[I. L. R. 18 Calc. 316

See SPECIAL APPEAL — SMALL CAUSE COURT SUITS—MESNE PROFITS.

[I. L. R. 18 Calc. 316

——, Suit for, and for possession.

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM.

[I. L. R. 19 Calc. 615

See RES JUDICATA—RELIEF NOT GRANTED.

[I. L. R. 17 Calc. 968

[I. L. R. 21 Calc. 252

See VALUATION OF SUIT—SUITS.

[I. L. R. 17 Calc. 704

[I. L. R. 15 Bom. 416

(1) MODE OF ASSESSMENT AND CALCULATION.

1.—*Mesne profits on accreted land—Presumption as to quantity of land under cultivation—Evidence.*] In determining the mesne profits upon alluvial land gained by accretion and decreed to the respondent, the amount of such profits depending upon the quantity of land that had been under cultivation during a definite period, the Courts below found that, at the end of that time, an area of a certain number of *bighas* was cultivated land. There was no evidence, however, to show what had been the increase year by year of the area cultivated, and on this question the appellants objecting to the amount of the mesne profits assessed by the Court could have produced evidence consisting of the papers usually kept in a zemindari *serishta* showing how gradual the increase had been: but these documents they withheld:—*Held*, by the Privy Council, that on the above facts, the Courts had properly presumed against them, that the entire area of all the *bighas* above mentioned had come under cultivation from the beginning of the period. MAHABIR PERSHAD *v.* RADHA PERSHAD SINGH.

[I. L. R. 18 Calc. 540

2.—*Mesne profits, ascertainment of—Deductions claimed.*] Where a decree awarded mesne profits of the lands claimed in the suit, and the Court declined, in execution of the decree, to investigate questions relating to the deductions claimed by the defendant, on the ground that to do so would be "to go behind the decree," and that it was not competent to the Court to do that in executing the decree:—*Held*, that the mesne profits could only be ascertained after making deductions from the gross earnings for all such payments made by the defendant as the plaintiff would have been bound to make if he had been in possession. It was, therefore, the duty of the Court executing the decree to inquire into the payments which the defendant alleged he had made, and also to determine the question, whether, as alleged by the plaintiff, the lands forming the subject-matter of the suit were rent-free. KACHAR ALA CHELA *v.* OGHADBHAI THAKARSHI. OGHADBHAI THAKARSHI *v.* KACHAR ALA CHELA.

[I. L. R. 17 Bom. 35

MINOR.

Col.

1. Liability on Contracts 720
2. Right to Enforce Contracts ... 720
3. Custody of Minors 720
4. Representation of Minor in Suits ... 721
5. Bombay Minors Act (XX of 1864) ... 723

See BENGAL TENANCY ACT, s. 93.
[I. L. R. 20 Calc. 881

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R. 15 Bom. 594

See COURT OF WARDS ACT, s. 55.
[I. L. R. 17 Calc. 688

See CUSTODY OF CHILD.
[I. L. R. 16 Bom. 307

See CASES UNDER GUARDIAN.

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT.
[I. L. R. 15 Bom. 565
[I. L. R. 18 Calc. 69

See HINDU LAW—GUARDIAN—POWERS OF GUARDIANS.
[I. L. R. 14 Bom. 562

See HINDU LAW—PARTITION—RIGHT TO ACCOUNT ON PARTITION.
[I. L. R. 17 Bom. 271

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[I. L. R. 17 Calc. 298

See LETTERS PATENT, HIGH COURT, CL. 15.
[I. L. R. 14 Bom. 555

See CASES UNDER LIMITATION ACT, 1877, S. 7.

See MAHOMEDAN LAW—ENDOWMENT.
[I. L. R. 19 Calc. 203

See MAJORITY ACT, S. 3.
[I. L. R. 17 Calc. 944

See MALABAR LAW—JOINT FAMILY.
[I. L. R. 14 Mad. 78

——, Illegal disposal of—

See PENAL CODE, S. 372.
[I. L. R. 15 Mad. 41, 75, 323
[I. L. R. 16 Bom. 737
[I. L. R. 21 Calc. 97

——, Power of guardian to bind—

See ISSUES—FRESH OR ADDITIONAL ISSUES.
[I. L. R. 19 Calc. 507

See LAND ACQUISITION ACT, S. 19.
[I. L. R. 17 Bom. 299

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——, Suit by—

See LIMITATION ACT, 1877, ARTS. 95, 96.
[I. L. R. 14 All. 498

——, Suit by guardian for—

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT.
[I. L. R. 20 Calc. 498

(1) LIABILITY ON CONTRACTS.

1.—*Contract by a minor—Voidable contract.*] A contract entered into with a minor is only voidable at the option of the minor. *Shashi Bhusan* v. *Jadu Nath Dutta*, I. L. R. 11 Calc. 552, followed. MAHAMED ARIF *v.* SARASWATI DEBYA.
[I. L. R. 18 Calc. 259

(2) RIGHT TO ENFORCE CONTRACTS.

2.—*Right of minor to contract—Contract by a minor—Specific performance of contract, right of minor to enforce—Contract Act (IX of 1872), s. 11.*] A minor in this country cannot maintain a suit for specific performance of a contract entered into on his behalf by his guardian. *Flight* v. *Bolland*, 4 Russ. 298, followed. *Semble:*—Having regard to the provisions of s. 11 of the Contract Act (IX of 1872), a minor in this country cannot contract at all. *Mahamed Arif* v. *Saraswati Debya*, I. L. R. 18 Calc. 259, and *Hanmant Lakshman* v. *Jayarao Narsinha*, I. L. R. Bom. 50, referred to. FATIMA BIBI *v.* DEBNAUTH SHAH.
[I. L. R. 20 Calc. 508

(3) CUSTODY OF MINORS.

3.—*Act IX of 1861, ss. 1, 3, 4—District Judge, jurisdiction of—Civil Procedure Code, s. 17—Act IX of 1875 (Majority Act), s. 3—Discretion of Court—Guardian—Certificate of guardianship.*] An application was made to the District Judge of Allahabad, under s. 1 of Act IX of 1861, by a relative of a minor, alleging that the minor had, by the acts and with the connivance and assistance of the defendants, at Allahabad, been removed from the plaintiff's custody and guardianship at Allahabad, and praying for the minor's restoration thereto. At the time when the application was made, the minor was at Lahore:—*Held* that, under ss. 1 and 4 of Act IX of 1861, read with s. 17 of the Civil Procedure Code, the application was cognizable by the District Judge of Allahabad, where the cause of action arose; and that, even apart from s 17 of the Code, the minor having been in the custody and guardianship of a person within the jurisdiction of the Judge of Allahabad, that officer had full jurisdiction to deal with the application. Under s. 3 of Act IX of 1875 (the Indian Majority Act) a person under the age of eighteen is a minor within the meaning of Act IX of 1861. No such restriction as is imposed by s. 27 of Act XL of 1858, prohibiting the appointment of a guardian of any minor whose father is living and is not a minor, applies to persons applying under s. 1 of

MINOR—*continued.*

(3) CUSTODY OF MINORS—*concluded,*

Act IX of 1861. Where the father of a minor was old and unable to work from age and weakness, and the minor's elder brother had been maintaining and educating the minor at his own expense, *held* that, under the circumstances, the brother was competent to apply under s. 1 of Act IX of 1861, and to ask for a certificate of guardianship. The words in s. 3 of Act IX of 1861, "and thereupon proceed to make such order as it shall think fit in respect to the custody or guardianship of such minor," confer on the Court an absolute discretion to make an order as to custody or guardianship, or to refrain from making such an order where the circumstances do not call for such an order being made. Where a minor Hindu over the age of sixteen, who had embraced Christianity and left the house of his elder brother by whom he had been maintained and brought up, appeared to be well able to take care of and provide for himself, and preferred to be left as he was, and had sufficient mental capacity to judge what was best for himself, the Court refused to make any order upon an application by the brother for his custody and guardianship. SARAT CHANDRA CHAKARBATI *v.* FORMAN.

[I. L. R. 12 All. 213

(4) REPRESENTATION OF MINOR IN SUITS.

4.—*Civil Procedure Code, s.* 443—*Defence of minority—Guardian ad litem, appointment of—Procedure.*] When minority is pleaded as defence to an action, a guardian should be appointed for the defendant, and a preliminary issue should be framed and tried as to whether defendant is or is not a minor. KASI DOSS *v.* KASSIM SAIT.

[I. L. R. 16 Mad. 344

5.—*Act XL of* 1858, *s.* 3—*Order granting certificate to act as guardian of minor—Obtaining a certificate—Majority Act* (*IX of* 1875).] When a Court, to which application has been made under s. 3 of Act XL of 1858 for a certificate, has adjudged the applicant entitled to have one, he then substantially obtains it; although it may not be drawn up or issued at the time. Having obtained such an order, he has in substance complied with the terms of the Act; in the same way as, when a plaintiff has judgment that he shall have a decree in his suit, it may be said that he has then obtained his decree. Therefore, where a minor had been represented in a suit by a person who had obtained an order for a certificate under s. 3, but had not had it issued to him, the absence of a certificate was held to be not such an irregularity as entitled the minor, on coming of age, to have the proceedings set aside on the ground that he had not been properly represented. MUNGNIRAM MARWARI *v.* GURSAHAI NAND. LIAKUT HOSSEIN *v.* GURSAHAI NAND.

[I. L. R. 17 Calc. 347
[L. R. 16 I. A. 195

6.—*Married woman—Next friend—Civil Procedure Code* (*Act XIV of* 1882), *s.* 445.] A married woman may act as the next friend of an infant

MINOR—*continued.*

(4) REPRESENTATION OF MINOR IN SUITS—*concluded.*

plaintiff. *Guru Pershad Sing* v. *Gossain Munraj Puri*, I. L. R. 11 Calc. 733, over-ruled. ASIRUN BIBI *v.* SHARIP MONDUL.

[I. L. R. 17 Calc. 488

7.—*Suit to set aside alienation affecting minor's interests — Madras Regulation V of* 1804, *s.* 8—*Manager appointed under Regulation—Collector—Next friend of minor.*] The holder of an impartible zemindari governed by the law of primogeniture, having a son, executed a mining lease of part of the zemindari for a period of twenty years by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor his minor son and successor brought a suit by the Manager appointed under Madras Regulation V of 1804, s. 8, and the Manager being subsequently dismissed, the Court of Wards authorized the Collector of the District to conduct the suit as next friend of the minor. The suit was one against the assignee of the lease to have the lease set aside:—*Held*, by PARKER, J., that the plaintiff could sue by the Collector as his next friend since the Court of Wards had authorized him to do so: there is nothing in the Regulation to restrict the duty of conducting a suit as next friend of a minor to the Manager appointed under s. 8. BERESFORD *v.* RAMASUBBA.

[I. L. R. 13 Mad. 197

8.—*Decree against guardian of a minor—Immaterial irregularity—Error in description of defendant.*] In a suit by an adopted son, after the death of his adoptive father, to recover ancestral land sold in execution of a decree against his adoptive mother therein described as the guardian of the present plaintiff, who was then an infant, it appeared that the decree had been passed on a bond executed by the then defendant in respect of a debt due by her husband:—*Held*, that the plaintiff should be regarded as a party to the suit in which the decree executed against the land had been passed, and that the present suit should be dismissed. NATESAYYAN *v.* NARASIMMAYYAR.

[I. L. R. 13 Mad. 480

9.—*Suit in substance against minor—Sale-certificate, irregular description in—Decree against widow representing her minor son—Decree, sale of infant's share under.*] A sale-certificate expressed a rent-decree to have been made against *R*, the widow and heiress of *K*, and the mother of a minor son, name unknown:—*Held*, that this description, though irregular, showed that in substance the suit was against the infant, and that the infant's share was sold under the decree. *Hari Saran Moitra* v. *Bhubaneswari Debi*, I. L. R. 16 Calc. 40: L. R. 15 I. A. 195; and *Suresh Chunder Wum Chowdhry* v. *Jugut Chunder Debi*, I. L. R. 14 Calc. 204, followed. KEDAR PROSUNNO LAHIRI *v.* PROTAP CHUNDER TALUKDAR.

[I. L. R. 20 Calc. 11

MINOR—*concluded.*

(5) BOMBAY MINORS ACT (XX OF 1864).

10.—*Alienation by a person not holding a certificate under the Act—Natural or de facto guardian—Charge of minor's person and property—Jurisdiction of Civil Court—Act XL of* 1858.] The Bombay Minors Act (XX of 1864) does not forbid the natural or *de facto* guardian of a minor not holding a certificate under the Act from disposing of property belonging to a minor. The meaning of the first section of the Act is that the care of the persons of all minors and the charge of their property shall be, as is expressly provided in Act XL of 1858, subject to the jurisdiction of the Court. HONAPA *v.* MHALPAI.

[I. L. R. 15 Bom. 259

MINORITY.

——, Disability of—

See LIMITATION ACT, 1877, s. 7.

[I. L. R. 17 Calc. 263

[I. L. R. 13 Mad. 135, 236

[I. L. R. 16 Bom. 536

[I. L. R. 20 Calc. 714

See LIMITATION ACT, 1877, s. 8.

[I. L. R. 13 Mad. 236

[I. L. R. 16 Mad. 436

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See EVIDENCE ACT, s. 35.

[I. L. R. 17 Calc. 849

MIRASI RIGHT, EVIDENCE OF.

See GRANT—RESUMPTION OR REVOCATION OF GRANT.

[I. L. R. 14 Mad. 431

MIRASIDARS.

See ENHANCEMENT OF RENT—LIABILITY TO ENHANCEMENT.

[I. L. R. 17 Bom. 475

See LANDLORD AND TENANT—NATURE OF TENANCY.

[I. L. R. 17 Bom. 475

MISCHIEF.

See THEFT.

[I. L. R. 17 Calc. 852

MISDIRECTION.

See APPEAL TO PRIVY COUNCIL—CRIMINAL CASES.

[I. L. R. 15 All. 310

See CASES UNDER CHARGE TO JURY—MISDIRECTION.

MISJOINDER OF CAUSES OF ACTION.

See APPELLATE COURT—OTHER ERRORS AFFECTING MERITS.

[I. L. R. 15 All. 380

See CASES UNDER MULTIFARIOUSNESS.

MISJOINDER OF PARTIES.

See BENAMI TRANSACTION—CERTIFIED PURCHASERS.

[I. L. R. 16 Mad. 290

1.—*Madras Regulation* (*V of* 1804), *s.* 8—*Suit by ward of the Court of Wards—Civil Procedure Code*, 1882, *s.* 464.] The holder of an impartible zemindari, governed by the law of primogeniture, having a son, executed a mining lease of part of the zemindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor, his minor son and successor, by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards), sued the assignee of the lessee to have the lease set aside. The second plaintiff was the grantee from the Court of Wards (acting on behalf of the minor zemindar) of certain mining rights on the same land:—*Held, per* MUTTUSAMI AYYAR and WILKINSON, JJ. (affirming the judgment of PARKER, J.) that the interests of the first and second plaintiffs not being inconsistent with each other, the suit was not bad for misjoinder. BERESFORD *v.* RAMASUBBA.

[I. L. R. 13 Mad. 197

2.—*Civil Procedure Code* (*Act XIV of* 1882), *ss.* 26, 31, 34—*Persons jointly interested in a suit—Objection taken for first time on appeal.*] The plaintiffs were the widow and an alleged adopted son of one *I*, who was the uncle of the defendant *R*. In execution of a decree against *R* the property in dispute was attached. The plaintiffs intervened and objected to the attachment on the ground that the property belonged to *I* and not to *R*, the judgment-debtor. This objection was disallowed. Thereupon the plaintiffs filed a regular suit to set aside the attachment. The Court of First Instance decided in plaintiffs' favour. The defendants appealed. The lower Appellate Court was of opinion that the interests of the two plaintiffs were antagonistic, and following the decision in *Lingammal* v. *Chinna*, I. L. R. 6 Mad. 239, held that the suit was bad for misjoinder of parties. The case was thereupon remanded for an amendment of the plaint. On appeal to the High Court:—*Held*, reversing the remand order, that the objection for misjoinder as co-plaintiffs not having been taken by the defendant in the Court of First Instance, the Appellate Court ought not, under s. 34 of the Code of Civil Procedure (Act XIV of 1882), to have allowed the objection. *Held* also that as plaintiff No. 2 admitted the adoption of plaintiff No. 1, their claims were in no way antagonistic. They were both jointly interested in disproving defendant's title. They could therefore sue jointly under s. 26 of the Code of Civil Procedure *Lingammal* v. *Chinna*, I. L. R. 6 Mad. 239, distinguished. FAKIRAPA *v.* RUDRAPA.

[I. L. R. 16 Bom. 119

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See CHARTER-PARTY.

[I. L. R. 14 Bom. 241

[I. L. R. 15 Bom. 389

See CONTRACT — ALTERATION OF CONTRACTS—BY THE COURT (INEQUITABLE CONTRACTS).

[I. L. R. 17 Calc. 291

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See CHARTER-PARTY.

[I. L. R. 16 Bom. 561

See SETTLEMENT — CONSTRUCTION OF SETTLEMENT.

[I. L. R. 17 Bom. 407

——— in fact.

See SPECIAL APPEAL — GROUNDS OF APPEAL — EVIDENCE, MODE OF DEALING WITH.

[I. L. R. 15 Bom. 670

——— in law.

See LIMITATION ACT, 1877, s. 5.

[I. L. R. 13 Mad. 269

[I. L. R. 12 All. 461

——— in name of party to contract.

See CONTRACT — BOUGHT AND SOLD NOTES.

[I. L. R. 20 Calc. 854

——— of taxing officer.

See COURT-FEES ACT, s. 5.

[I. L. R. 15 All. 117

———, Power of Court to rectify—

See DECREE —ALTERATION OF AMENDMENT OF DECREE.

[I. L. R. 16 Bom. 404

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See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.

[I. L. R. 17 Calc. 144

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———, Advance of, to pay off mortgage.

See DECREE—FORM OF DECREE—MORTGAGE.

[I. L. R. 13 All. 581

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[I. L. R. 17 Calc. 610

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See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R. 15 Bom. 580

MONEY HAD AND RECEIVED—*concld.*

See LIMITATION ACT, 1877, ART. 97.

[I. L. R. 19 Calc. 123

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 15 Mad. 382

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MONEY HAD AND RECEIVED.

[I. L. R. 17 Bom. 42

MONEY PAID FOR BENEFIT OF ANOTHER.

—Payment of revenue by the claimant of an estate while temporarily holding it under a decree in his favour, afterwards reversed—Liability of owner for money so paid for his benefit.] Where a claimant having obtained possession of an estate under a decree in good faith has paid the revenue and cesses (in default of which payment the estate would have been sold), although the decree may have been reversed afterwards, and he may have been deprived of possession, he nevertheless is entitled to be repaid the amount by his opponent, who benefits by it, provided that he has not realized, or failed through any fault of his own to obtain, enough out of the rents and profits during his possession to cover this expenditure. The plaintiff had paid revenue and cesses in such a case:—*Held*, that on his accounting for mesne profits, and all that he had received, or might have received, from the estate, he should recover from the defendants, in whose favour the decree was ultimately made the difference between his, the plaintiff's, payments and receipts. DAKHINA MOHAN ROY *v.* SARODA MOHAN ROY.

[I. L. R. 21 Calc. 142

[L. R. 20 I. A. 160

MONEY PAID, SUIT FOR.

See LIMITATION ACT, 1877, ART. 97.

[I. L. R. 19 Calc. 123

MONEY PAID TO SAVE ESTATE FROM SALE.

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE.

[I. L. R. 13 All. 195

MONEY PAID UNDER PROTEST.

See VOLUNTARY PAYMENT.

[I. L. R. 14 Bom. 299

MONEY PAID UNDER REVERSED DECREE.

See CIVIL PROCEDURE CODE, s. 244 — QUESTIONS IN EXECUTION OF DECREE.

[I. L. R. 13 Mad. 437

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 13 Mad. 437

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[I. L. R. 12 All. 419

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[I. L. R. 15 Bom. 583

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[I. L. R. 14 Bom. 377, 577
[I. L. R. 15 Bom. 183

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[I. L. R. 14 Mad. 491
[I. L. R. 18 Calc. 164

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[I. L. R. 13 Mad. 322

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[I. L. R. 20 Calc. 533

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[I. L. R. 14 Bom. 176

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[I. L. R. 17 Bom. 677

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[I. L. R. 15 Bom. 532

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[I. L. R. 15 Mad. 134

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[I. L. R. 21 Calc. 241

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[I. L. R. 18 Calc. 320
[I. L. R. 14 Mad. 71

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[I. L. R. 21 Calc. 568

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See LIMITATION ACT, 1877, ART. 120.
[I. L. R. 14 All. 405

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[I. L. R. 16 Mad. 64

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[I. L. R. 13 All. 102

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[I. L. R. 21 Calc. 366

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[I. L. R. 14 Bom. 577

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[I. L. R. 13 Mad. 192

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——, Equitable—

See DEPOSIT OF TITLE-DEEDS.

[I. L. R. 14 All. 238

See CASES UNDER EQUITABLE MORTGAGE.

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[I. L. R. 14 Bom. 269

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[I. L. R. 19 Calc. 361 note.

——, Usufructuary—

See DEED—CONSTRUCTION.

[I. L. R. 16 Bom. 172

See TRANSFER OF PROPERTY ACT, s. 67.

[I. L. R. 14 Mad. 232

[I. L. R. 15 Mad. 174

(1) FORM OF MORTGAGES.

1.—*Vendor and purchaser—Conditional right of re-purchase—Redemption, suit for.*] *A* having previously hypothecated certain land to *B*, executed a conveyance of it to him in 1873 for a consideration which was now found to have been an inadequate price. On the same day, *B* executed to *A* a "counterpart document" by which he covenanted to reconvey the land and return the sale-deed if the sale amount be repaid to him in cash on 27th May 1875. The documents contained no provision as to interest and reserved no power for the purchaser to recover his purchase-money. In 1888 *A's* representative, alleging that the transaction evidenced by the above documents was a mortgage, brought a suit to redeem it:—*Held*, that the transaction did not constitute a mortgage, and that the plaintiff was not entitled to redeem. AYYAVAYYAR *v.* RAHIMANSA.

[I. L. R. 14 Mad. 170

2.—*Transfer of Property Act (IV of 1882), ss. 58 (d), 98—Usufructuary mortgage—Anomalous mortgage.*] A deed of mortgage executed in 1879 for a consideration of Rs. 300 provided that the term of the mortgage should be four years certain, that certain interest should be payable, that the mortgagee should have possession, that the profits should be appropriated first in lieu of yearly interest and any balance appropriated in payment of the principal debt, and that the mortgagor should be entitled to redeem if the principal and interest were paid at the expiration of the four years. The mortgagee never obtained possession; and in 1882 he brought a suit against the mortgagor to recover the unpaid interest then due, and obtained a decree, which was satisfied by the sale of property belonging to the judgment-debtor. In 1886 he brought another suit for recovery of the principal together with the residue of interest up to the date of suit:—*Held* that, inasmuch as there was no stipulation in terms that the mortgagee was to remain in possession until payment

MORTGAGE—*continued.*

(1) FORM OF MORTGAGES—*continued.*

of the mortgage, money, the instrument did not strictly fall within s. 58 (*d*) of the Transfer of Property Act (IV of 1882), *i.e.*, as a usufructuary mortgage, and that the rights and liabilities of the parties must be determined in accordance with the principles enunciated in s. 98 of that Act, *i.e.*, as an anomalous mortgage:—*Held*, upon the construction of the instrument, that it must be regarded as a usufructuary mortgage not only during the four years, but after their expiration. HIKMATULLA KHAN *v.* IMAM ALI.

[I. L. R. 12 All. 203

3.—*Sale, with right reserved of repurchase within a period, distinguished from mortgage—Construction of documents of sale and of agreement for re-sale.*] A document purporting to be one of sale, though it is accompanied by a contract reserving to the vendor a right to repurchase the property sold, on repaying the purchase-money within a certain time, is not on that account to be construed as if it were a mortgage. *Alderson* v. *White*, 2 De G. and J. 105, referred to and followed, the law of India and of England being the same on this point. BHAGWAN SAHAI *v.* BHAGWAN DIN.

[I. L. R. 12 All. 387

[L. R. 17 I. A. 98

4.—*Bond stipulating for recovery of loan from moveable and immoveable property.*] A bond containing a stipulation "that if the principal and interest is not paid up at the stipulated period, then the obligee will be at liberty to recover the whole of his money, together with the interest fixed, by instituting a suit from my moveable and immoveable property, my own '*milk*'" does not create a mortgage upon any property of the obligor. COLLECTOR OF ETAWAH *v.* BETI MAHARANI.

[I. L. R. 14 All. 162

5.—*Deed of conditional sale—Bai-bil-wafa, nature of—Transfer of Property Act (IV of 1882), s. 58—Pre-emption, suit for.*] The transaction known to Mahomedan law as a *bai-bil-wafa* is a mortgage within the meaning of s. 58 of Act IV of 1882, and not a sale. The plaintiff in a suit for pre-emption had, prior to the sale of the property claimed, executed a deed in respect of his share in the village in virtue of which he claimed the right to pre-empt, the material portion of which deed was as follows:—"Thirdly, if I, the vendor, or the heirs of me, the vendor, Ali Jan, *alias* Ali Ahmad, should pay off the entire consideration money mentioned above on the Puranmashi of Jeth Sudi 1299 *fasli* to the said purchaser, she should without any objection or hesitation receive the money, and, returning the property sold, described above in the document, to me, the vendor, revoke the sale:"—*Held*, that this deed was a *bai-bil-wafa* or mortgage by conditional sale, and that as the conditional sale had not become absolute at the time when the right of pre-emption accrued, the conditional vendor or

MORTGAGE—*continued.*

(1) FORM OF MORTGAGES—*concluded.*

mortgagor had still a subsisting right of pre-emption. *Bhagwan Sahai* v. *Bhagwan Din*, I. L. R. 12 All. 387, distinguished. ALI AHMAD *v.* RAHMATULLAH.

[I. L. R. 14 All. 195

(2) CONSTRUCTION OF MORTGAGES.

6.—*Suit for arrears of interest and sale—Suit before principal sum became due—Right of suit.*] A suit for arrears of interest accrued due on a mortgage and for the sale of the property comprised therein was brought before the date fixed for the repayment of the principal. The mortgage provided that, on default of payment of interest on the due date, interest should be chargeable on the arrear, and also that interest at an enhanced rate should be chargeable on the principal:—*Held*, that the plaintiff was not entitled to sue for the arrears of interest or to bring the mortgaged premises to sale before the principal became due. KANNU *v.* NATESA.

[I. L. R. 14 Mad. 477

7.—"*Asmani sultani*," *meaning of the words—Destruction of subject of mortgage—Cost of re-building by mortgagee.*] A mortgage-deed stipulated that in the event of the mortgaged house being destroyed "by *asmani sultani*" (*i.e.*, evils from the skies or the king), the mortgagor should rebuild it, and if he did not do so, and if the mortgagee rebuilt it, he (the mortgagor) would pay the cost of rebuilding with interest in addition to the mortgage-debt. The house was destroyed by a fire which originated in another part of the village, and the mortgagor failing to rebuild the house, the mortgagee rebuilt it. The mortgagor brought a suit for redemption:—*Held*, that the repayment of the costs of rebuilding the house was a condition precedent to redemption. The destruction of the house was in the nature of a calamity from heaven within the meaning of the term *asmani*. SAKHARAMSHET *v.* AMTHA DEVJI GANDHI.

[I. L. R. 14 Bom. 28

8.—*Intention of parties—Mortgagee to have possession for ten years and to receive profits in lieu of interest—Mortgagor to recover possession in the year he paid the money after the expiration of the period—Power of sale—Cl. 3, s. 15 of Bombay Regulation V of 1827—Mortgagee's personal remedy against the mortgagor—Limitation.*] Where a mortgage-bond contained a stipulation that the mortgagee should enter into possession of the mortgaged property and enjoy the rents and profits in lieu of interest for ten years, and that after the expiration of that period the mortgagor should enter into possession in the year in which he paid the debt:—*Held*, that it was the intention of the parties that the mortgaged property should not be sold in satisfaction of the mortgage-debt, that the mortgagee was to remain in possession for ten years, and that, under cl. 3 of s. 15 of Bombay Regulation V of 1827, he had no power of sale. The mortgagee having brought his suit within

MORTGAGE—*continued.*

(2) CONSTRUCTION OF MORTGAGES—*contd.*

three years from the expiration of the stipulated period of ten years, *held*, that the mortgagee's personal remedy against the mortgagor was not time-barred. IDRUS *v.* ABDUL RAHIMAN.

[I. L. R. 16 Bom. 303

9.—*Hypothecation of "our zemindari property"—Ascertainment of mortgagors' zemindari interest at date of mortgage—Ambiguity in deed—Act IX of 1872 (Contract Act), s. 29—Act IV of 1882 (Transfer of Property Act), s. 58.*] A deed of simple mortgage described the mortgaged property as "our zemindari property" (*zemindari apni*), and gave no further specification or description. It was proved that at the date of the mortgage the mortgagors had a definite and ascertained fractional share in two zemindaris:—*Held*, that the words "our zemindari property" were sufficiently certain, or at any rate were capable of being made certain, by the proof of the mortgagors being at the date of the mortgage-deed, the owners of a specific zemindari interest; and that the mortgage was therefore not void for uncertainty. *Kanhia Lal* v. *Muhammad Husain Khan*, I. L. R. 5 All. 11; *Bishen Dayal* v. *Udit Narain*, I. L. R. 8 All. 486; *Ramsidh Pande* v. *Balgobind*, I. L. R. 9 All. 158; *Rae Manik Chand* v. *Behari Lal*, 2 N. W. 263; *Deojit* v. *Pitambar*, I. L. R. 1 All. 275; *Tailby* v. *The Official Receiver*, L. R. 13 Ap. Cas. 523; and *Tadman* v. *D'Epineuil*, L. R. 20 Ch. D. 758, referred to. SHADI LAL *v.* THAKUR DAS.

[I. L. R. 12 All. 175

10.—*Simple usufructuary mortgage—Right to have the property sold—Distinct covenant to pay the principal—Possession in lieu of interest.*] A merely usufructuary mortgage will confer no right to have the mortgaged property sold. But where there is a distinct covenant to pay the principal, and the land is security for the same, the intention of the parties is that the property should be sold. Such a transaction is a simple usufructuary mortgage, and carries with it the right to have the property sold in default of payment of the principal. A mortgagee, who is entitled to possession in lieu of interest, and who does not take possession, loses his right to interest, and cannot ask that the property be sold for default in payment of interest, the property being security for the principal only. MAHADAJI *v.* JOTI.

[I. L. R. 17 Bom. 425

11.—*Transfer of Property Act, ss. 40, 58 (b), 69, 100.—Charge—Lien—Transfer of interest in immoveable property—"Arh"—"Mustaghraq"—Power of sale in default—Bond-fide purchaser for value without notice—Rights of purchaser at sale in execution of decree.*] In January 1883 a decree was obtained upon a bond executed in October 1875, whereby certain immoveable property was made security for a loan, the transaction being described not by the word "*rehan*" or mortgaged, but by the words "*arh*" and "*mustaghraq*." The instrument contained no express covenant for sale

MORTGAGE—*continued.*

(2) CONSTRUCTION OF MORTGAGES—*contd.*

of the property in default of payment, but it contained a covenant prohibiting alienation until payment, and a stipulation that, in the event of the property specified being destroyed or proving insufficient to satisfy the debt, the obligee might realize the amount from the obligor's person and other property. The decree directed the sale of the property as in the terms of an ordinary decree for the sale of mortgaged property. In 1885, before any steps had been taken in execution of the decree, the same property was sold in execution of a simple money-decree against the obligor, and the purchaser obtained possession. It was found as a fact that at the time of the sale the bond of October 1875, and the decree thereon of January 1883, were not notified, but through no fault of the obligee decree-holder, and that the purchaser was a *bonâ-fide* transferee for value without notice of the bond and decree:—*Held*, that the words "*arh*" and "*mustaghraq*" used in the bond implied a power of sale in default and denoted a mortgage without possession: and the transaction, though entered into prior to the passing of the Transfer of Property Act (IV of 1882), must be regarded as amounting to a simple mortage as defined in s. 58 (*b*) of that Act, and not as merely creating a charge as defined in s. 100; and that, consequently, the rights of the obligee must prevail over those of the subsequent *bonâ-fide* purchaser for value without notice of the bond and the decree thereon. *Held* also by MAHMOOD, J., that the title of the judgment-debtor at the time of the sale in 1885 in execution of the simple money-decree was subject to the mortgage-decree of January 1883, and the purchaser at the sale could acquire no higher title than the judgment-debtor possessed, and was equally bound by the terms of the decree of January 1883, in respect of the property which he had purchased, and could not prevent the property being sold under that decree except by paying up the decretal money. *Unnopoorna Dassee* v. *Nufur Poddar*, 21 W. R. 148, and *Enayet Hossein* v. *Giridhari Lal*, 2 B. L. R. P. C. 75: 12 Moo. I. A. 366, referred to. *Per* MAHMOOD, J.—The power of sale mentioned in s. 58 (*b*) of the Transfer of Property Act is not a power in the mortgagee to bring the mortgaged property to sale independently of a Court. The observations on this point of MUTTUSWAMI AYYAR, J., in *Rangasami* v. *Muttu Kumarappa*, I. L. R. 10 Mad. 509, of BIRDWOOD and JARDINE, JJ., in *Khemji Bhagvandas* v. *Rama*, I. L. R. 10 Bom. 519, and of PETHERAM, C. J., in *Sheoratan Kuar* v. *Mahipal Kuar*, I. L. R. 7 All. 258, dissented from. The nature of simple mortgage, hypothecation, charge and lien discussed. *Aliba* v. *Nanu*, I. L. R. 9 Mad. 218; *Martin* v. *Purseram*, 2 Agra 124; *Raj Coomar Ram Gopal Narain Singh* v. *Ram Dutt Chowdhry*, 13 W. R. F. B. 82; *Moti Ram* v. *Vitai*, I. L. R. 13 Bom. 90; *Gopal Pandey* v. *Parsotam Das*, I. L. R. 5 All. 121; *Shib Lal* v. *Ganga Prasad*, I. L. R. 6 All. 551; *Girdhar Ranchoddas* v. *Hakamchand Revachand*, 8 Bom. 75; *Sobhagchand Gulabchand* v. *Bhaichand*, I. L. R. 6 Bom. 193; *Naran Purshotam* v. *Daolatram Virchand*, I. L. R. 6 Bom. 538; and *Durga Prasad* v. *Shambhu Nath*, I. L. R. 8 All. 86, referred to. KISHAN LAL v. GANGA RAM.

[I. L. R. 13 All. 28

MORTGAGE—*continued.*

(2) CONSTRUCTION OF MORTGAGES—*concld.*

(3) POWER OF SALE.

12.—*Exercise of power of sale by mortgagee—Surplus proceeds of sale in hands of mortgagee—Interest charged against mortgagee on such surplus from date of sale.*] A mortgagee, who under his power of sale has sold the mortgaged property, must refund to the mortgagor any surplus moneys remaining in his (mortgagee's) hands with interest at six per cent., *i.e.*, the Court rate, from the date of the completion of the sale. ABDUL RAHMAN v. NOOR MAHOMED.

[I. L. R. 16 Bom. 141

13.—*Notice of sale—Subsequent mortgage of same property—Notice of sale to subsequent mortgagors—Notice of sale to subsequent mortgagees—Delay in selling—Rescission of notice of sale—Suit by second mortgagee to prevent sale—Offer to redeem joint mortgage—Right of mortgagee—Exercise power of sale—Injunction to restrain sale.*] Certain property was mortgaged to the defendants in 1885 for Rs. 60,000, and the mortgage-deed contained the usual power of sale on notice to the mortgagors or their assigns. The debt was not paid, and the defendants on the 31st August 1891 gave notice of sale to the mortgagors, but did not then proceed further in the matter. Three days after this notice, *viz.*, on the 3rd September 1891, the mortgagors mortgaged the property to the plaintiffs for Rs. 10,000 On the 18th November 1892 the plaintiffs by letter offered to transfer their mortgage to the defendants or to join with them in selling the property. In the event of their being unwilling to accept either of these proposals the plaintiffs requested the defendants to render an account of the sum due to them in order that they, (the plaintiffs,) might, if so advised, redeem the defendants' mortgage. On the 3rd December 1892 the plaintiffs by letter enquired whether the defendants were willing to re-convey the mortgaged property on payment of a certain sum, which was less than the amount the defendants claimed, but they did not positively offer to pay the defendants either that amount or the amount which might be found to be due. In April 1893 the defendants advertised the property for sale on the 27th of that month without giving notice of sale to the plaintiffs, and on that day the plaintiffs filed a suit and obtained a rule, restraining the defendants from proceeding with the sale. In the argument of the rule it was contended for the plaintiffs, first, that the defendants had no power to sell, because their mortgage-deed required previous notice of sale to be given to the mortgagors or their assigns, and no such notice had been given to the plaintiffs who, as subsequent mortgagees, were assigns of the equity of redemption; secondly, that the notice of sale given to the mortgagors on the 31st August 1891, had been rescinded, and a fresh notice was, therefore, required; and, thirdly, that inasmuch as the plaintiffs were willing to

MORTGAGE—*continued.*

(3) POWER OF SALE—*concluded.*

redeem the defendants' mortgage the sale should be restrained:—*Held* (1) that notice to the plaintiffs was not necessary. Proper notice had been given to the mortgagors on the 31st August 1891, three days before the plaintiffs had acquired any interest in the equity of redemption. No further notice was required to be given to any person who at that time was not an assign, in order to enable the defendants to sell under that notice. An assign must take things in the state in which he finds them, and cannot claim to alter rights which have accrued before he has any authority to interfere; (2) that the notice of sale of the 31st August 1891 had not been rescinded by the defendants, who were not bound to give a fresh notice before the sale advertised to be held on the 27th April 1893. The mere fact of a long delay taking place between the maturing of the notice of sale and the actual sale does not make a fresh notice necessary; (3) that on the evidence it did not appear that the plaintiffs were able and willing to redeem the defendants' mortgage. The plaintiffs admittedly had not the money in hand, and the Court would not interfere with a mortgagee's right to sell on the mere chance of the plaintiffs being able to make arrangements to pay the amount due at some uncertain time. Where a mortgage-deed which gave the mortgagee a power of sale contained also a proviso that the remedies of the mortgagors, their heirs, administrators, and assigns in respect of any breach of the clauses or provisions (relating to such sale) or of any impropriety or irregularity whatever in any such sale should be in damages:—*Held*, on the authority of *Prichard* v. *Wilson*, 10 Jur. N. S. 330, that the Court would not grant an injunction to restrain the mortgagee from selling the mortgaged property. MUNCHERJI FURDOONJI *v.* NOOR MAHOMEDBHOY JAIRAJBHOY PIRBHOY.

[I. L. R. 17 Bom. 711

(4) SALE OF MORTGAGED PROPERTY.

(*a*) RIGHTS OF MORTGAGEES.

14.—*Redemption of prior mortgage by puisne mortgagee—Sale, at his suit, of mortgaged property, on what terms, and with payment of what incumbrances.*] Upon a claim by a puisne mortgagee to redeem prior incumbrances, and in the alternative, for a decree ordering a sale of the property mortgaged, the sale was decreed, with application of the purchase-money to pay incumbrances in their due order; and with redemption by the plaintiff of a prior mortgagee, who was to have an option to redeem. UMES CHUNDER SIRCAR *v.* ZAHUR FATIMA.

[I. L. R. 18 Calc. 164

[L. R. 17 I. A. 201

15.—*Position of mortgagee who has purchased the mortgaged property after obtaining leave to bid.*] A decree-holder (a mortgagee) who has, after obtaining leave to bid at a sale, purchased the mortgaged premises, is in the same position as an independent purchaser, and is only bound to

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) RIGHTS OF MORTGAGEES—*continued.*

give credit to the mortgagor for the actual amount of his bid. *Mahabir Pershad Singh* v. *Macnaghten*, I. L. R. 16 Calc. 682, followed. GUNGA PERSHAD *v.* JAWAHIR SINGH.

[I. L. R. 19 Calc. 4

16.—*Mortgagee in possession not paying assessment during famine — Payment of arrears of assessment by person registered as occupant who obtains conveyance from mortgagor—Mortgagee lying by—Acquiescence — Estoppel — Foreclosure, suit for.*] The plaintiffs, as mortgagees under a mortgage-deed executed to them by the father of the first defendant, had actual possession of the land in question from 1872 to 1877, during which time they cultivated it, and paid the assessment upon it. In the years 1877 and 1878 they ceased to cultivate it, and paid no assessment. In 1879 the first defendant (his father the mortgagor having died) sold the land to the second defendant, who then paid the arrears of assessment upon it to the Mamlatdar, and took possession. The plaintiffs took no steps to prevent his taking possession, or cultivating the land. In 1886 the plaintiffs brought this suit for foreclosure. They alleged that they had been dispossessed by the second defendant in 1879, and they claimed mesne profits for the years 1883, 1884 and 1885. The Court of First Instance directed the defendant to redeem the mortgage within six months, in default whereof it granted foreclosure to the plaintiffs. On appeal the District Judge reversed that decree, holding that the plaintiffs were estopped by their conduct from recovering the land from the second defendant who had purchased it in good faith and for value. On appeal to the High Court:—*Held*, restoring the order of the Court of First Instance, that the plaintiffs were entitled to a decree The second defendant only acquired by his purchase the mortgagor's interest in the land. Even if the mortgagor had been in actual possession, the registration of the mortgage would have been notice to the purchaser of the mortgagee's title. As to the question of estoppel, the mortgagees were under no obligation to do anything, as it was not suggested that they stood by while the second defendant was negotiating for his purchase, or had led him by so doing to suppose that they were not interested in the land. They lived at a distance from the land, and it did not appear that they ever knew of the sale. Nor was there any obligation upon them to move in the matter after the conveyance of the land to the second defendant, provided they did not postpone doing so beyond the period prescribed by the Act of Limitation. CHINTAMAN RAMCHANDRA *v.* DAREPPA.

[I. L. R. 14 Bom. 506

17.—*Second mortgage of the same property to the same person—Sale in execution of decree on first mortgage—Purchase by mortgagee decree-holder.*] A decree-holder holding two decrees of different Courts on separate bonds hypothecating the same property, in execution of the first decree

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) RIGHTS OF MORTGAGEES—*continued.*

purchased the property himself. The surplus of the sale-proceeds was distributed by the Court among other persons who held money-decrees against the same judgment-debtor:—*Held*, that the mortgagee decree-holder could not afterwards execute the second decree against property of the judgment-debtor not included in the hypothecation bond. *Ahmad Wali* v. *Bakar Hussain*, Weekly Notes, 1882, p. 61; *Khwajah Bakhsh* v. *Imaman*, Weekly Notes, 1885, p. 210, and *Babu Ravji* v. *Ramji Svarupji*, I. L. R. 11 Bom. 112, referred to. BALLAM DAS *v.* AMAR RAJ.

[I. L. R. 12 All. 537

18.—*Rights of prior and subsequent incumbrancers inter se—Rights of mortgagee purchasing equity of redemption—Right of sale of mortgaged property.*] *A* and *B* jointly mortgaged certain immoveable property to *X* by a simple mortgage-deed on the 10th September 1882. They again mortgaged the same property to *X* on the 23rd February 1884. On the 6th August 1885 *A* mortgaged a portion of the said property to *Y*. On the 12th August 1885 *B* mortgaged a portion of the same property to *X*. On the 21st August 1885, *A* mortgaged a portion of the same property to *Z*. On the 20th September 1886 *A* and *B* sold to *X* the property mortgaged to him, and with the proceeds of that sale *X's* three mortgages were paid off. On the 8th January 1887 *Y* sued *A*, *B* and *X* for cancelment of the deed of sale of the 20th September 1886, and for sale of the property mortgaged to him under his deed of the 6th August 1885. *Y* did not make *Z* a party to this suit. He did not ask for redemption of *X's* mortgages nor for foreclosure of *Z's* mortgage. Upon these facts it was held by EDGE, C. J., STRAIGHT, TYRRELL and KNOX, JJ., MAHMOOD, J., *dissentiente* (1) That *X* not having exhibited any intention of foregoing altogether his rights in respect of the mortgages of the 10th September 1882 and the 23rd February 1884, was entitled to keep those securities alive and to use them as a shield against the claim of *Y*, the subsequent mortgagee, to the extent of the amount which was due under them on the 20th September 1886. *Gokaldas Gopaldas* v. *Rambaksh Sheochand*, I. L. R. 10 Calc. 1035; L. R. 11 I. A. 126; *Gaya Prasad* v. *Salik Prasad*, I. L. R. 3 All. 682; *Mul Chand Kuber* v. *Lallu Trikam*, I. L. R. 6 Bom. 404; *Shantapa* v. *Balapa*, I. L. R. 6 Bom. 561; *Ramu Naikan* v. *Subbaraya Mudali*, 7 Mad. 229; *Sirbadh Rai* v. *Raghunath Prasad*, I. L. R. 7 All. 568; *Janki Prasad* v. *Sri Matra Mautangui Debia*, I. L. R. 7 All. 577; and *Gangadhara* v. *Sivarama*, I. L. R. 8 Mad. 246, referred to. (2) That *Y* as subsequent mortgagee could not bring to sale under his mortgage-deed the property mortgaged to him without first redeeming *X's* two prior mortgages. *Wajed Hossein* v. *Hafez Ahmed Rezah*, 17 W. R. 480; *Khub Chand* v. *Kalian Das*, I. L. R. 1 All. 240; *Kasum-un-nissa Bibi* v. *Nilratna Bose*, I. L. R. 8 Calc. 79; *Har Prasad* v. *Bhagwan Das*, I. L. R.

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*contd.*

(*a*) RIGHTS OF MORTGAGEES—*concluded.*

4 All. 196; *Muhammad Ibrahim* v. *Tek Chand*, Weekly Notes, 1882, p. 59; *Ali Hasan* v. *Dhirja*, I. L. R. 4 All. 518; *Zalim Gir* v. *Ram Charan Singh*, I. L. R. 10 All. 629; and *Umes Chunder Sircar* v. *Zahur Fatima*, I. L. R. 18 Calc. 164: L. R. 17 I. A. 201 referred to, in addition to the cases cited above. *Roghunath Prasad* v. *Jurawan Rai*, I. L. R. 8 All. 105, distinguished. *Vencata Chella Kandian* v. *Panjanadien*, I. L. R. 4 Mad. 213; *Gangadhara* v. *Sivarama*, I. L. R. 8 Mad. 246, and the judgments of MAHMOOD, J., in *Sirbadh Rai* v. *Ragunath Prasad*, I. L. R. 7 All. 568, and in *Janki Prasad* v. *Sri Matra Mautangui Debia*, I. L. R. 7 All. 577, dissented from. MAHMOOD, J., *contra*:—Inasmuch as a mortgagee cannot bring the mortgaged property to sale without the intervention of a Court, a private purchase by the mortgagee of the rights remaining to the mortgagor in such property, though it may be valid as against the mortgagor, can have no effect in defeating the rights of puisne and mesne incumbrancers. Moreover, where a second mortgage to a third party intervenes between the mortgagee and the purchase by the prior mortgagee of the rights of the mortgagor, such intermediate mortgage prevents the merger of the rights of the prior mortgagee as such with those which he might acquire by his purchase. The right of sale is an essential incident of a simple mortgage, and inheres as well in puisne and mesne as in prior mortgagees, subject to the rights of the prior mortgagees. The puisne or mesne mortgagee is not bound by the terms of the prior mortgage, or mortgages, but is entitled to bring the property mortgaged to sale, subject to such prior mortgage or mortgages. MATA DIN KASODHAN *v.* KAZIM HUSAIN.

[I. L. R. 13 All. 432

19.—*Transfer of Property Act (IV of 1882), s. 101—Extinguishment of mortgage—Merger—Third mortgagee paying off first mortgage—Priority of charges.*] Certain land was mortgaged in 1876 to *A*, and on 10th February 1877 to *B*, and two days afterwards to *C*: the last-mentioned mortgage was effected to satisfy a decree obtained by *A* on his mortgage. In February 1882 *C* obtained a decree on his mortgage: this decree was discharged by the sale of the land to *D*, who borrowed part of the purchase-money from the plaintiff, to whom he mortgaged it on the day of the sale. *B* subsequently obtained against *D* and the mortgagor's representative a decree on his mortgage, which comprised a declaration that the sale of 1882 was subject to his lien and brought the property to sale and became the purchaser in execution. The plaintiff now sued *B* and *D* on his mortgage:—*Held*, that the plaintiff's mortgage was entitled to priority over the mortgage of 10th February 1877 to the extent to which the loan secured thereby had gone to discharge the mortgage of 1876. SEETHARAMA *v.* VENKATAKRISHNA.

[I. L. R. 16 Mad. 94

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*contd.*

(*b*) PURCHASERS.

20.—*Purchase by a mortgagor at a judicial sale of interest under a second mortgage—Rights against the mortgagor of purchaser at a sale in execution of a consent decree upon the first mortgage.*] The same property, with other, was mortgaged, first to one mortgagee and secondly to another. Decrees were obtained upon both mortgages: the terms of the first decree giving effect to a compromise between the mortgagor and the first mortgagee. Sales in execution followed; but before the sale under the decree upon the first mortgage was effected, the sale under the decree upon the second took place, the possession remaining with the purchaser at the first sale, who was acting *benami* for the mortgagor. At the subsequent sale under the decree upon the first mortgage, the plaintiff purchased, and now sued for possession. The High Court decided that the plaintiff was entitled to the first mortgage lien, in consequence of his purchase at the second sale; and, all persons interested in the matter being before the Court, that the proper course was to direct an inquiry as to how much of the mortgage-debt was chargeable upon that portion of the property which formed the subject of the appeal; and to direct that so much of the mortgage debt should be realized by the sale of that property:—*Held*, that this judgment incorrectly treated the plaintiff as mortgagee, refusing him a charge for the full amount of his purchase-money. The case depending upon its own circumstances, it would be contrary to equity to allow the mortgagor to set up any right to possession as acquired by his purchase; and that the plaintiff, as against him, was entitled to a decree for possession as purchaser. LUTF ALI KHAN *v.* FUTTEH BAHADUR.

[I. L. R. 17 Calc. 23

[L. R. 16 I. A. 129

21.—*Purchaser of mortgagor's interest — Redemption — Successive mortgages on family property—Assignment of equity of redemption.*] Two brothers constituted an undivided Hindu family. The eldest mortgaged half of certain family lands to *P* and the other half to the father (since deceased) of the contending defendants, and placed the mortgagees respectively in possession. Neither mortgage was binding on the younger brother who mortgaged his share of the same land to the plaintiff. The plaintiff obtained a decree on his mortgage and attached and brought to sale in execution and himself purchased the half share of his mortgagor, and having afterwards purchased the share of the elder brother and come to a settlement with *P*, now brought a suit for a moiety of the land in the possession of the contending defendants as forming part of the half share of his mortgagor:—*Held*, that the plaintiff being the assignee of the elder brother could not deprive his mortgagees of a portion of their security without asking for an account and offering

MORTGAGE—*continued.*

(4) SALE OF MORTGAGED PROPERTY—*concld.*

(*b*) PURCHASERS—*concluded.*

to pay whatever might be due on the footing of the mortgage. SUBBARAZU *v.* VENKATARATNAM.

[I. L. R. 15 Mad. 234

22.—*Interest acquired by purchaser—Previous sale in execution of a money-decree—Suit to recover possession by mortgagee purchaser—Right of previous purchaser to redeem.*] A purchaser at a sale in execution of a decree on a mortgage acquires the estate of the mortgagor as it existed when he executed the mortgage. *K* and others mortgaged a certain property to *DA* and *V*. Subsequently to the mortgage the property was sold in execution of a money-decree, and was purchased by *DR* and others, who were put in possession. Afterwards *DA* and *V* upon their mortgage obtained a decree to which *DR* and others, the purchasers under the money-decree, were not made parties. In execution of the mortgage-decree the property was purchased by *DA*, to whom symbolical possession was given. In a suit brought by *DA* against *DR* and others to recover actual possession:—*Held*, that *DR* and others were entitled to have an opportunity of redeeming the property from *DA*. *Held*, further, that had *DR* and others been made parties to the mortgage suit they would have been entitled to redeem on payment of what was then due on the mortgage, and that, therefore, these were the terms on which they must now be allowed to redeem. DADOBA ARJUNJI *v.* DAMODAR RAGHUNATH.

[I. L. R. 16 Bom. 486

(5) MARSHALLING.

23.—*Transfer of Property Act (IV of 1882) ss. 3, 78, 101—Priority of mortgages—Gross negligence—Extinguishment of charges — Registration Act (III of 1877), ss. 17 (d), 48—Notice by registration—Merger.*] In a suit for the declaration of the priorities of mortgages and for foreclosure, it appeared that the mortgaged premises had been purchased by the mortgagor from the second defendant and others in 1878, under a conveyance containing a covenant that they were free from incumbrances, and the mortgagor then received, *inter alia*, a Collector's certificate which was recited in another title-deed also handed over to her. The premises were mortgaged to defendant No. 2, who was an experienced sowcar, in 1879, and to the plaintiff company in 1883, and again in 1884, and were conveyed absolutely by the mortgagor to defendant No. 2 in 1886. The mortgagor executed a rent agreement to the plaintiff company on the occasion of each of the mortgages of 1883 and 1884. The above mortgages were registered, but the plaintiff company and defendant No. 2 had no notice at the respective dates of their mortgages and conveyance of any previous incumbrance. The plaintiff company received the title-deeds of the estate from the mortgagor (but not the Collector's certificate) on the execution of the mortgage of 1883; the second defendant alleged that he had

MORTGAGE—*continued.*

(5) MARSHALLING—*concluded.*

held them under a prior incumbrance which was consolidated in the mortgage of 1879, and that before the execution of that mortgage the mortgagor had obtained them from him for the purpose of obtaining a Collector's certificate, and had told him that the Collector had retained them, in order to account for their not being replaced in his custody:—*Held* by the lower Court (SHEPHARD, J.) apart from the question whether the mortgage of 1879 had been extinguished by the conveyance of 1886, that the conduct of defendant No. 2 in permitting the title-deeds to remain in the possession of the mortgagor amounted to gross negligence within the meaning of the Transfer of Property Act, s. 78, and that the registration of the mortgage to defendant No. 2 did not affect the plaintiff company with constructive notice of its existence, and that, accordingly, the subsequent mortgages to the plaintiff company were entitled to priority. *Held*, on appeal, COLLINS, C J., and HANDLEY, J. (1) that the plaintiff company were not affected with constructive notice of the mortgage of the second defendant by reason of its registration or of their failure to search the registry or to inquire after the Collector's certificate; (2) that the second defendant not having given a reasonable explanation of his conduct in leaving the title-deeds with the mortgagor four years after his mortgage, lost his priority by reason of his gross neglect under the Transfer of Property Act, s. 78, apart from the circumstances raising a suspicion of fraud on his part. *Quære*—Whether the case might not have been decided against the second defendant on the ground that his mortgage was merged in the conveyance of 1886. SHAN MAUN MULL *v.* MADRAS BUILDING COMPANY.

[I. L. R. 15 Mad. 268

Affirming the decision in
MADRAS BUILDING COMPANY *v.* ROWLANDSON.

[I. L. R. 13 Mad. 383

(6) REDEMPTION.

(*a*) RIGHT OF REDEMPTION.

24.—*Transfer of Property Act*, ss 92, 93—*Time fixed for redemption—Application to execute the decree.*] In a suit to redeem a *kanom* a redemption decree was passed which provided that the *kanom* amount and the value of improvements be paid in three months. The decree amount was not paid within that period, but the decree-holder applied to execute the decree at a later date:—*Held*, that the application did not fall under the proviso of s. 93 of the Transfer of Property Act, and that the decree-holder was not then entitled to have the decree executed. *Poresh Nath Mojumdar* v. *Ramjodu Mojumdar*, I. L. R. 16 Calc. 246, dissented from. Sections 92 and 93 of the Act ought to be read together, and the proviso of the latter section has no application where the mortgagee does not apply for foreclosure or where the original decree does not contain the last clause mentioned in s. 92. ELAYADATH *v.* KRISHNA.

[I. L. R. 13 Mad. 267

MORTGAGE—*continued.*

(6) REDEMPTION—*continued.*

(*a*) RIGHT OF REDEMPTION—*continued.*

25.—*Mortgage by conditional sale before Transfer of Property Act.*] Suit, in 1889, to redeem a mortgage of 1880, which contained a provision that, if the mortgage money was not paid in March 1882, the mortgage premises should become the absolute property of the mortgagee:—*Held*, that the plaintiff was entitled to redeem. *Ramasami Sastrigal* v. *Samiyappanayakan*, I. L. R. 4 Mad. 179, explained and followed. VENKATASUBBAYYA *v.* VENKAYGA.

[I. L. R. 15 Mad. 230

26.—*One of several join mortgagors before partition—Mortgagee who has acquired a share in the equity of redemption.*] The owner of a share in the equity of redemption need not obtain partition before suing for redemption. He is entitled to redeem the whole mortgage, and the fact that the mortgagee has himself purchased a portion of the equity of redemption does not defeat that right. *Marakar Akath Kondarakayil Mamu* v. *Punjabatath Kuttu*, I. L. R. 6 Mad. 61, dissented from. MORA JOSHI *v.* RAMCHANDRA DINKAR JOSHI.

[I. L. R. 15 Bom. 24

BHIKAJI DAJI *v.* LAKSHMAN BALA.

[I. L. R. 15 Bom. 27 note

27.—*Mortgage by three sharers—Partition of equity of redemption—Redemption by two sharers—Excess payment—Suit for redemption by the third sharer—Set-off.*] Three undivided brothers mortgaged certain land to the defendant. They afterwards separated and partitioned their property. Two of them redeemed their respective shares of the mortgaged land. Besides paying the defendant two-thirds of the sum due on the mortgage, they paid him Rs. 189-13-4, being two-thirds of a sum of Rs. 284-12-0, which he alleged he had been obliged to pay as assessment in respect of the mortgaged lands. Subsequently the plaintiff purchased the whole of the lands comprised in the mortgage, and he now sued to redeem the one-third share which remained in mortgage. The defendant claimed to charge the plaintiff with the remaining one-third of the sum which he alleged he had paid as assessment. The Subordinate Judge disallowed the defendant's claim, and ordered redemption on payment by the plaintiff of Rs. 570-10-8, being one-third of the sum due on the mortgage. In appeal, the District Judge found that the defendant had not proved the alleged payment of assessment, and he allowed the plaintiff to deduct from the sum due on the mortgage Rs. 189-13-4 which had been paid to the defendant by the other two mortgagors. On second appeal by defendant:—*Held*, varying the decree of the District Judge, that the plaintiff was not entitled to this deduction. The three mortgagors had severed their interests. The plaintiff's right to redeem his one-third was perfectly distinct from the redemption by the other two mortgagors, and there was no longer any joint account to which

MORTGAGE—*continued.*

(6) REDEMPTION—*continued.*

(*a*) RIGHT OF REDEMPTION—*continued.*

the sums previously paid could be credited. LAKSHUMAN GIBIRAYA NAIK *v.* MADHAV KRISHNA SHENVI.

[I. L. R. 15 Bom. 186

28.—*Adverse possession—Possession obtained by mortgagee from Mamlatdar—Non-payment of assessment by mortgagor—Payment by mortgagee—Bombay Land Revenue Code (Bombay Act V of 1879), ss. 56, 57, 153.*] In a suit for redemption of land mortgaged to the defendant in 1870 the defendant pleaded adverse possession. In 1876 he had obtained a decree for sale which he had not executed. In 1877 the Mamlatdar being about to sell the land for arrears of assessment the defendant paid the amount, and was thereupon put into possession by the Mamlatdar. He had retained possession ever since and had continued to pay the assessment:—*Held*, that the plaintiff was entitled to redeem. It did not appear that the land had been declared to be forfeited by the Collector under ss. 56, 57 and 153 of the Land Revenue Code (Bombay Act V of 1879). The fact that the defendant prevented proceedings under s. 56 by himself paying the arrears of assessment did not make his possession adverse and did not affect the original relationship of mortgagee and mortgagor between himself and the plaintiff. The defendant not having exercised his right to sell under the decree of 1876, the plaintiffs were now entitled to redeem, the sum found due by the decree at its date being taken as *res judicata* between the parties. DASHARATHA *v.* NYAHALCHAND.

[I. L. R. 16 Bom. 134

29.—*Right of assignee of mortgagor—Undertaking not to alienate the equity of redemption—Assignment of the equity of redemption—Repayment of mortgage debt.*] Where a mortgagor undertook that he would not alienate the equity of redemption, and that the mortgagee should not be obliged to receive the money from any one but the original mortgagor:—*Held*, that as the undertaking absolutely forbade alienation, and thus deprived the mortgagor of a right which was an essential incident of the estate he had in the property by virtue of his equity of redemption, it could not be given effect to. When a mortgage-debt is contracted in a particular currency, it should be repaid in that currency. TRIMBAK JIVAJI DESHAMUKHA *v.* SAKHARAM GOPAL.

[I. L. R. 16 Bom. 599

30.—*Prior and puisne incumbrances—Puisne incumbrancer not made a party to suit upon prior incumbrance.*] If a prior incumbrancer, having notice of a puisne incumbrance, does not, when he puts his mortgage into suit, join the puisne incumbrancer as a party, that puisne incumbrancer's right to redeem will not thereby be affected. *Mohan Manor* v. *Togu Uka*, I. L. R. 10 Bom. 224; *Muhammad Samiuddin* v. *Man Singh* I. L. R. 9 All. 125, and *Gajadhur* v. *Mul Chand*, I. L. R. 10 All. 520, referred to. NAMDAR CHAUDHRI *v.* KARAM RAJI.

[I. L. R. 13 All. 315

(*b*) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

31.—*Redemption after expiry of term—Mortgage with clause of conditional sale.*] The plaintiff sought to redeem two mortgages executed by his father in 1839 in favour of the defendant. The mortgages contained *gahan lahan* clauses, in virtue whereof the defendant denied the plaintiff's right to redeem, and contended that the lands mortgaged had become his absolute property, which contention the lower Courts disallowed, holding the lands redeemable:—*Held*, that the lower Courts were right in recognizing the plaintiff's right to redeem as still in existence, the rule laid down in the case of *Ramji* v. *Chinto*, 1 Bom. 199, being in force in the Presidency of Bombay with regard to mortgages containing clauses of conditional sale. RAMCHANDRA BABA SATHE *v.* JANARDHAN APAJI.

[I. L. R. 14 Bom. 19

32.—*Redemption after expiry of term—Mortgage with clause of conditional sale — Gahan lahan — Merger — Admissions in depositions or pleadings — Estoppel.*] The land in dispute was mortgaged with possession to the father of the defendant by the father of the plaintiffs in 1854, on condition that the same was to be considered as sold to the mortgagee if Rs. 240 were not paid to the mortgagee within five years from the date of the mortgage. No such payment, however, was made. In 1860 the plaintiffs' father executed to defendant's father another deed respecting other land, which deed mentioned the land in dispute as being in the possession and enjoyment of the same mortgagee as purchaser thereof. In 1866 the defendant-mortgagee brought a suit on the mortgage of 1854, as also on other mortgages, and claimed Rs. 721 as due upon the mortgage after deducting Rs. 240 as the price of the land mortgaged. The mortgagor objected to the claim, but his objection was overruled, and the account was taken, allowing Rs. 240 as the consideration for the sale of the land under the conditional sale clause, and the claim was decreed accordingly. In 1884 the present suit was brought to redeem the mortgage. The defendant contended that under the conditional sale clause the mortgage did not subsist, and that the present suit was barred by the suit of 1866. The lower Courts held the plaintiffs' claim to be too stale for admission, and the mortgage of 1854 to be merged in the decree of 1866, and rejected the claim. On appeal by the plaintiff to the High Court, *held*, reversing the decree of the lower Courts, that the mortgage in question still subsisted, regard being had to the rule in *Ramji* v. *Chinto*, 1 Bom. 199, which is still in force in the Presidency of Bombay with regard

MORTGAGE—*continued.*

(6) REDEMPTION—*continued.*

(*b*) REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM—*concluded.*

to mortgages containing clauses of conditional sale, whether executed before or after 1864. *Held*, also, that the mortgage had not merged in the decrees of 1866, which was in a suit to recover a different mortgage debt secured by different property. It was contended that the understanding of the parties up to 1866 was that the mortgage had been converted into a sale, and that the property had passed to the defendant by purchase, and, therefore, the plaintiffs were prevented from redeeming it:—*Held*, that such understanding (being similar to an admission in a deposition or pleading) did not operate as an estoppel, or prevent the mortgagors (plaintiffs) from redeeming their property. ABDUL RAHIM *v.* MADHAVRAV APAJI.

[I. L. R. 14 Bom. 78

33.—*Transfer of Property Act*, ss. 60, 62 (*a*)—*Mortgage with possession—Time for redemption of mortgage—Provision for discharge of debt out of income.*] In 1885 the plaintiffs mortgaged certain land to the defendants, and placed them in possession under a mortgage-deed, which provided that the profits of the land should be taken towards the discharge of the mortgage debt, and that when it was so discharged, possession should be surrendered to the mortgagor. In a suit in which the plaintiffs asked for an account and for a decree for redemption on payment by them of the balance that might be found due on the mortgage, it appeared, on accounts being taken of the proceeds of the land, that the principal and interest had not been discharged thereby:—*Held*, that the right to redeem had not accrued to the plaintiffs, and that the suit should be dismissed. TIRUGNANA SAMBANDHA PANDARA SANNADHI *v.* NALLATAMI.

[I. L. R. 16 Mad. 486

(*c*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

34.—*Decree directing payment of mortgagee's costs on a certain date, or, in default, foreclosure—Effect of such default—Enlargement of the time fixed for redemption.*] In a redemption suit the Court of First Instance found that the mortgage debt had already been paid off out of the rents of the mortgaged property, and it accordingly awarded possession to the plaintiff, directing that each party should bear his own costs. In execution of this decree the mortgagor took possession of the property in dispute. On appeal by the mortgagee the District Court amended the decree by directing the mortgagor to pay the mortgagee's costs of the suit by a certain day, or, in default, to stand for ever foreclosed. The mortgagor failed to pay the costs as directed. Thereupon the mortgagee applied, in execution, to have the property restored to his possession. The Subordinate Judge granted this application. The District Judge, in appeal, held that the decree did not provide for delivery of the property by the mortgagor to the mortgagee. He, however, directed the mortgagor to pay the mortgagee's costs with interest. On appeal to the High Court:—*Held*, that as the mortgagee's costs which became a part of the mortgage debt, were not paid on the due date, the mortgagor was finally foreclosed, and the property thereupon passed to the mortgagee. It was, therefore, not competent to the Court, in execution, to practically enlarge the time for redemption, by allowing the mortgagor further time to pay the mortgagee's costs. SUBHANA *v.* KRISHNA.

[I. L. R. 15 Bom. 644

35.—*Decree for redemption—Absence of clause for foreclosure on non-payment in three months—Default in payment in time allowed.*] In a suit for redemption the mortgagors obtained a decree on 1st March 1886, whereby they were directed to pay the mortgagee the sum of Rs. 649 within three months, whereupon they were to get possession of the mortgaged property. The decree contained no clause for foreclosure in the event of non-payment. On 19th April the mortgagees appealed to the High Court against the decree. On 12th October 1886 the mortgagor paid the Rs. 649 into Court and applied for execution of the decree, which, though the three months had expired, the Court allowed holding that it had power to enlarge the time for execution: this order was set aside on appeal, the High Court holding that there was no power in the Court executing a decree to enlarge the time for execution. On 15th July 1890 the mortgagee was allowed to withdraw his appeal, and the mortgagor's application to be allowed to execute the decree was rejected, the Court holding that the time could not be computed from the withdrawal of the appeal, but that it ran from the date of the original decree. *Quære*—Whether, there being no foreclosure clause in the decree, the mortgagor could file another suit to redeem. CHUDASAMA MANABHAI MADARSANG *v.* ISHWARGAR BUDHAGAR.

[I. L. R. 16 Bom. 243

36.—*Decree for redemption—Absence of clause as to time of payment or foreclosure—Execution of the decree after three years—Darkhasts presented from time to time—Limitation Act (XV of 1877), Art. 179.*] Where a redemption decree contained no clause as to the time for payment of the mortgage debt, or foreclosure in default of payment:—*Held*, that the mortgagor could still, after the expiration of three years from the date of the decree, execute it by paying the mortgage-money, having regard to various *darkhasts* presented by him from time to time, provided the *darkhasts* complied with the conditions of the Limitation Act (XV of 1877). *Dicta* to the contrary in *Gan Savant Bal Savant* v. *Narayan Dhond Savant*, I. L. R. 7 Bom. 467, and *Maloji* v. *Sagaji*, I. L. R. 13 Bom. 567, disapproved of. NARAYAN GOVIND *v.* ANANDRAM KOJIRAM.

[I. L. R. 16 Bom. 480

MORTGAGE—*continued.*

(6) REDEMPTION—*concluded.*

(*c*) MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE—*concluded.*

37.—*Decree for redemption on payment of a certain amount, and on default, mortgagee to recover possession—Suit for an account by mortgagor—Right of suit.*] A mortgagee having obtained possession of mortgaged property under a decree, which directed the mortgagor to redeem on payment of a certain amount, and in default the mortgagee to recover and retain possession until payment:—*Held*, that a subsequent suit by the mortgagor against the mortgagee for an account and possession would not lie. The mortgagor could recover possession only on payment of the amount mentioned in the mortgage-decree. *Dattatraya Rarji* v. *Anaji Ramchandra*, P. J. 1886, p. 237, distinguished. RAMBHAT *v.* RAGHO KRISHNA DESHPANDE.

[I. L. R. 16 Bom. 656

TANI BAGAVAN *v.* HARI.

[I. L. R. 16 Bom. 659 note

38.—*Transfer of Property Act* (*IV of* 1882), *s.* 93—*Redemption decree—Time for and manner of redemption.*] In a suit on a *kanom* or usufructuary mortgage brought by the mortgagor a decree was passed on 16th March 1889, whereby it was only directed that on payment by the plaintiff of a certain sum within six months the defendant should surrender the mortgage premises to him. Against this decree an appeal was filed objecting both to the direction for surrender of the mortgaged premises and also to the sum fixed as the amount payable by the mortgagor. On 21st August 1889 the appeal was withdrawn so far as concerned the first of these matters: as to the second the Appellate Court heard the appeal in June 1890, and merely confirmed the original decree. In February 1890 the plaintiff applied for execution and tendered the amount mentioned in the decree stating that he would have paid it before but for the appeal. The Court of First Instance made an order as prayed, and the money was paid to the mortgagees, and the mortgage premises were surrendered to the plaintiff. On appeal by the mortgagees against this order:—*Held*, that the appeal should be dismissed on the grounds that the mortgagee had never obtained an order for sale under the Transfer of Property Act, s. 93, and the mortgagor's equity of redemption had not become extinct, and that the necessity for a sale was obviated by payment before any order was made under that section. KANARA KURUP *v.* GOVINDA KURUP.

[I. L. R. 16 Mad. 214

(7) FORECLOSURE.

(*a*) DEMAND AND NOTICE OF FORECLOSURE.

39.—*Sufficiency of notice—Bengal Regulation XVII of* 1806, *s.* 8—*Notice not signed by Judge.*] *Held*, that where the notice of foreclosure under s. 8 of Regulatton XVII of 1806 was signed not by the Judge but only by the Munsarim, the foreclosure proceedings were void *ab initio*:—*Held*, also that the notice which was upon the record of the foreclosure proceedings and bore the mortgagor's signature must be regarded as the original notice in the matter; and that the acknowledgment of receipt of notice by the mortgagor did not cure the inherent defect of its non-signature by the Judge. HANUMAN SARAN SINGH *v.* BHAIRON SINGH.

[I. L. R. 12 All. 189

(8) ACCOUNTS.

40.—*Civil Procedure Code, s.* 111—*Transfer of Property Act* (*IV of* 1882), *ss.* 2, 76—*Set-off—Waste by mortgagee in possession—Possession after date fixed for payment—Interest.*] In a suit in 1888 to recover principal and interest due on a usufructuary mortgage executed on 15th June 1870, which contained a covenant for repayment of the secured debt on 5th June 1878, the defendant pleaded and proved that the mortgagee had permitted certain buildings on the mortgage premises to fall into a ruinous condition, and it appeared that the mortgagee had remained in possession after June 1878:—*Held* (1) that the defendant was entitled to have the amount of the loss occasioned by the plaintiff's failure to make repairs brought into the mortgage account under the Transfer of Property Act, s. 76, and a separate suit by him for that amount was not necessary; (2) that the profits derived by the mortgagee after the date fixed for repayment should be regarded as having been enjoyed in lieu of interest. SHIVA DEVI *v.* JARU HEGGADE.

[I. L. R. 15 Mad. 290

41.—*Suit for redemption of two distinct mortgages—Right to separate accounts—Dekhan Agriculturists Relief Act* (*XVII of* 1879), *s.* 13—*Mode of taking accounts.*] By two separate mortgages certain lands were mortgaged in 1830 by the plaintiff's father to the defendant. In 1882 the plaintiff as an agriculturist brought the present suit for redemption of the lands comprised in both mortgages:—*Held*, that separate accounts of the two mortgages should be taken. The mortgages were distinct transactions relating to different lands, and s. 13 of the Dekhan Agriculturists Relief Act contains no words enabling the Court to treat them as one. The fact of their being included in the same suit could not affect the question. In taking the accounts of the above mortgages it was proved that on one mortgage there was a sum of Rs. 5,075-13-2 due to the plaintiff (mortgagor) by the defendant (mortgagee), and on the other mortgage a sum of Rs. 3,774-2-7 due to the defendant by the plaintiff. The plaintiff contended that although by the ruling in *Janoji* v. *Janoji*, I. L. R. 7 Bom. 185, he could not compel payment of the Rs. 5,075-13-2 due to him on the one

MORTGAGE—*concluded.*

(8) ACCOUNTS—*concluded.*

mortgage, he was entitled to have so much of it as might be necessary set-off against the Rs. 3,774-2-7 still due by him on the other mortgage. *Held*, that on the authority of *Janoji* v. *Janoji*, I. L. R. 7 Bom. 185, the plaintiff had no legal claim to the Rs. 5,075-13-2, and, that being so, the existence of that balance in his favour on account of one mortgage could not be treated as extinguishing the claim of the defendant to the Rs. 3,774-2-7 due on the other mortgage. The plaintiff as an agriculturist mortgagor was enabled to free his land from both the mortgages on the favourable terms provided by the Dekhan Agriculturists Relief Act (XVII of 1879), but was precluded from compelling the mortgagee to refund what the latter had personally acquired under the terms of his contract of mortgage. RAMCHANDRA BABA SATHE *v.* JANARDAN APAJI.

[I. L. R. 14 Bom. 19

42.—*Suit for redemption—Interest—Amount of interest allowed to mortgagee—Transfer of Property Act (IV of* 1882), *s.* 58.] In 1882, the plaintiffs sued to redeem a mortgage effected in 1833. The Court of First Instance allowed the mortgagee interest from the date of the bond. The Appellate Court reduced the interest awarded to the period of six years:—*Held*, reversing the decision of the lower Appellate Court, that the mortgagee was entitled to claim interest from the date of the bond up to the date of the decree. *Hari Mahadaji Saraskar* v. *Balambhat Raghunath Khare*, I. L. R. 9 Bom. 233, referred to. No provision of limitation is made by the Limitation Act for the payment of interest on the sum due to the mortgagee. In s. 58 of the Transfer of Property Act the mortgage-money is interpreted to include the interest due, and no time to the payment of interest is fixed. *Prabhakar Chintaman Dikshit* v. *Pandurang Vinayak Dikshit*, 12 Bom. 88, followed. DAUDBHAI RAMBHAI *v.* DAUDBHAI ALLIBHAI.

[I. L. R. 14 Bom. 113

43.—*Mortgage-debt—Apportionment by mortgagors—Mortgagee's acquiescence—Liability according to shares.*] Mortgagor co-sharers having, after the mortgage transaction, effected division among themselves and apportioned their liability under the mortgage-debt according to their shares with the acquiescence of the mortgagee:—*Held*, that though the mortgagee was not bound to recognize the arrangement made by the mortgagors among themselves, still as he appropriated the amounts paid by some of the mortgagors in paying off their respective shares of the mortgage-debt without there being a special direction to to that effect from those mortgagors, he was entitled to recover the remainder of that debt from the share of the mortgagor co-sharer by whom it was due. MAHADAJI HARI LIMAYE *v.* GANPATSHET DHONDSHET.

[I. L. R. 15 Bom. 257

MORTGAGE-DEBT, APPORTIONMENT OF.

See MORTGAGE—ACCOUNTS.

[I. L. R. 15 Bom. 257

See TRANSFER OF PROPERTY ACT, S. 82.

[I. L. R. 18 Calc. 320

[I. L. R. 14 Mad. 71

MORTGAGEE.

See PROBATE—OPPOSITION TO AND REVOCATION OF GRANT.

[I. L. R. 19 Calc. 48

MORTGAGOR, DEPOSIT BY.

See TRANSFER OF PROPERTY ACT, S. 83.

[I. L. R. 14 Mad. 49

MORTGAGOR AND MORTGAGEE.

See ESTOPPEL—DENIAL OF TITLE.

[I. L. R. 16 Mad. 328

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 16 Bom. 705

[I. L. R. 14 All. 509

See CASES UNDER MORTGAGE.

See TRANSFER OF PROPERTY ACT, S. 65.

[I. L. R. 13 Mad. 192

See CASES UNDER TRANSFER OF PROPERTY ACT, SS. 67, 68, 82, 83 AND 99.

MOSQUE

See MAHOMEDAN LAW—MOSQUE.

[I. L. R. 12 All. 494

[I. L. R. 13 All. 419

MOVEABLE PROPERTY.

See FINE.

[I. L. R. 20 Calc. 478

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 103.

[I. L. R. 13 Mad. 518

See THEFT.

[I. L. R. 15 Bom. 702

——, Suit for—

See DEPUTY COLLECTOR, JURISDICTION OF.

[I. L. R. 16 Mad. 323

——, Suit to redeem—

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 3.

[I. L. R. 15 Bom. 30

MULGENI TENURE.

See LANDLORD AND TENANT — ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

[I. L. R. 15 Mad. 67

MULTIFARIOUSNESS.

See MALABAR LAW—JOINT FAMILY.

[I. L. R. 15 Mad. 19

1.—*Misjoinder of causes of action—Civil Procedure Code, s. 31—Suit for removal of trustees and for money-decree.*] Suit by certain *dikshadars* or hereditary trustees of the Chitambaram temple against others of the *dikshadars* praying for their removal from office and for a money-decree alleging, that they had been jointly guilty of misconduct in respect of temple property in their custody, and had obstructed the repair of certain shrines:—*Held*, that the suit was not bad for misjoinder of causes of action. NATESA *v.* GANAPATI.

[I. L. R. 14 Mad. 103

2.—*Misjoinder of causes of action—Misjoinder of parties—Suit for partition and to set aside order disallowing objection to attachment—Civil Procedure Code*, 1882, *s.* 283—*Right of suit—Superintendence of High Court.*] There is nothing in the words of s. 283 of the Code of Civil Procedure (Act XIV of 1882) to limit the party unsuccessful in the attachment proceedings to a suit for a mere declaration of his alleged right. He is at liberty to pray, in the same suit, for any consequential relief to which he may be entitled. *A*, *B* and *C* were members of a joint Hindu family. In execution of a decree against *B* a portion of the family property was attached. Thereupon *A* intervened and objected to the attachment so far as his own share was concerned. The objection was disallowed, and the property was brought to sale and purchased by *D*. *A* then filed a suit (1) to set aside the order in the miscellaneous proceedings disallowing his objection to the attachment; and (2) for a partition of the whole family property. In this suit he impleaded not only his co-sharers, *B* and *C*, but also *D*, the auction-purchaser, and *E*, a mortgagee of *B's* share in the joint property. The Subordinate Judge, holding that the suit was bad for misjoinder of parties as well as of causes of action, returned the plaint for amendment by striking out the prayer for partition. On appeal this order was confirmed by the District Judge. On *A's* application to the High Court under s. 622 of the Code of Civil Procedure, *held*, that the suit was not bad either for misjoinder of parties or for misjoinder of causes of action. Treating the suit as one for partition, the auction-purchaser *D* and the mortgagee *E* were proper and even necessary parties. If *A* established his right to partition, he would be entitled to have the order in the miscellaneous proceedings set aside in the same suit. *Held* also that s. 283 of the Code of Civil Procedure did not prevent *A* from claiming partition in the present suit. *Held* further that even if the Subordinate Judge's view were right, that the two prayers could not be joined in one suit, his proper course was to have left it to the plaintiff to elect which of the two prayers he wished should be adjudicated upon by the Court. SADU BIN BAGHU *v.* RAM BIN GOVIND.

[I. L. R. 16 Bom. 608

MULTIFARIOUSNESS—*concluded.*

3.—*Joinder of parties—Joinder of causes of action—Contribution, suit for.*] Where the owner of two villages sold under a decree obtained upon a mortgage, claims contribution proportionately against the owners of the other properties included in the mortgage, and does not claim from them all collectively one lump sum as contribution, he may join all the contributors in one suit, and is not bound to bring separate suits for contribution against the separate owners. *Hira Chand* v. *Abdal*, I. L. R. 1 All. 455, distinguished. *Rujaput Rai* v. *Mahomed Ali Khan*, 5 N. W. 215; *Tavasi Telavar* v. *Palani Andi Telavar*, 3 Mad. 187; *Khema Debea* v. *Kamola Kant Bukhshi*, 10 B. L. R. 259 note; and *Eglinton* v. *Koylashnath Mozoomdar*, W. R. 1864, 303, referred to. He may also bring a single suit in respect of the two sales, and is not bound to bring a separate suit in respect of each sale. IBN HUSAIN *v.* RAMDAI.

[I. L. R. 12 All. 110

4.—*Suit for possession and mesne profits—Civil Procedure Code, s.* 45.] In a suit on title in which the recovery of immoveable property and mesne profits are claimed, the Court may, under s. 45 of the Code of Civil Procedure, order separate trials in respect of the claim for the recovery of the immoveable property and in respect of the claim for mesne profits. FATIMA BIBI *v.* ABDUL MAJID.

[I. L. R. 14 All. 531

MUNICIPAL ELECTION.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, S. 31.

[I. L. R. 19 Calc. 192, 195 note, 198

MUNICIPAL INSPECTOR.

See PUBLIC SERVANT.

[I. L. R. 13 Mad. 131

MUNICIPAL OFFICERS, COMPLAINTS BY.

See COURT-FEES ACT, S. 19.

[I. L. R. 16 Mad 423

MUNICIPALITY.

——, Obligation of, to grant license

See BENGAL MUNICIPAL ACT, 1884, S. 339.

[I. L. R. 17 Calc. 329

See HIGH COURT—JURISDICTION OF—HIGH COURT, CALCUTTA—CIVIL.

[I. L. R. 17 Calc. 329

——, Power of—

See BOMBAY DISTRICT MUNICIPAL ACT, S. 73.

[I. L. R. 14 Bom. 180

See MADRAS DISTRICT MUNICIPALITIES ACT, S. 103.

[I. L. R. 14 Mad. 467

MUNICIPALITY—*concluded.*

——, Suit against—

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 169.

[I. L. R. 15 Mad. 292

See PARTIES — PARTIES TO SUITS — GOVERNMENT.

[I. L. R. 15 Mad. 292

MUNSIF.

See MAGISTRATE, JURISDICTION OF — WITHDRAWAL OF CASES.

[I. L. R. 15 Mad. 94

MUNSIF, JURISDICTION OF.

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[I. L. R. 14 All. 417

See RES JUDICATA—COMPETENT COURT —GENERAL CASES.

[I. L. R. 15 Mad. 498

[I. L. R. 16 Mad. 456, 481

See SMALL CAUSE COURT, MOFUSSIL — JURISDICTION—GENERAL CASES.

[I. L. R. 13 Mad. 145

See SUBORDINATE JUDGE, JURISDICTION OF.

[I. L. R. 17 Calc. 155

[I. L. R. 14 Mad. 183

See TRANSFER OF CIVIL CASE.

[I. L. R. 13 All. 324

See VALUATION OF SUIT—SUITS.

[I. L. R. 13 Mad. 25, 56

[I. L. R. 14 Mad. 78, 183

[I. L. R. 15 Mad. 501

[I. L. R. 12 All. 506

1.—*Suit on mortgage-bond mortgaging sayer compensation—Malikhana—Interest in immoveable property—Civil Procedure Code, s.* 16—*Bengal Regulation XXVII of* 1793.] *A* mortgaged at Calcutta to *B* his *sayer* compensation payable at the General Treasury at Calcutta in respect of a certain *hât* within the Diamond Harbour sub-division. In a suit to enforce the mortgage-bond in the Court of the Munsif of Diamond Harbour, *held*, that *sayer* compensation did not partake of the nature of *malikhana*, that it was not immoveable property or any interest in immoveable property within the meaning of s. 16 of the Code of Civil Procedure, and that therefore the Munsif had no jurisdiction to entertain the suit. *Bungsho Dhur Biswas* v. *Mudhoo Mohuldas*, 21 W. R. 383, distinguished. SURENDRO PROSAD BHUTTACHARJI *v.* KEDAR NATH BHATTACHARJI.

[I. L. R. 19 Calc. 8

MUNSIF, JURISDICTION OF—*concluded.*

2.—*Decree containing order for ascertainment of mesne profits from date of suit to date of recovery of possession—Effect on jurisdiction of such mesne profits added to amount of decree exceeding jurisdiction of the Munsif—Valuation of suit.*] A suit, valued at Rs. 950, was brought in the Munsif's Court to recover possession of certain lands on the ground of illegal dispossession. No mesne profits up to date of suit were claimed, but the plaint prayed that such mesne profits from date of suit to recovery of possession, as might be ascertained in execution of decree, should be awarded to the plaintiff. The Munsif gave a decree in accordance with the prayer of the plaint. The plaintiff then asked that the mesne profits might be assessed, and in his petition he roughly estimated them at Rs. 1,595, and thereupon it was held both by the Munsif, and on appeal by the District Judge, that the Munsif had no jurisdiction, as he could not give a decree for more than Rs. 1,000:—*Held*, on appeal to the High Court, that the Munsif had jurisdiction to ascertain the mesne profits, and to give effect to the order made in his decree in the suit, notwithstanding that the amount of such mesne profits, when added to the value of the suit, might come to a sum in excess of the pecuniary jurisdiction of his Court. RAMESWAR MAHTON *v.* DILU MAHTON.

[I. L. R. 21 Calc. 550

3.—*Village Munsifs—Criminal Procedure Code, ss.* 1, 480, 482—*Contempt of Court.*] Sections 480—482 of the Code of Criminal Procedure do not apply to village Munsifs. QUEEN-EMPRESS *v.* VENKATASAMI.

[I. L. R. 15 Mad. 131

MURDER.

See ATTEMPT TO COMMIT OFFENCE.

[I. L. R. 15 Bom. 194

[I. L. R. 14 All. 38

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF AND MODE OF DEALING WITH EVIDENCE.

[I. L. R. 13 Mad. 426

——, Attempt to commit—

See CULPABLE HOMICIDE.

[I. L. R. 18 Calc. 484

——, Confession of—

See INSANITY.

[I. L. R. 14 Bom. 564

See PLEA.

[I. L. R. 14 Bom. 564

MUTUAL ASSURANCE SOCIETY.

See COMPANY—FORMATION AND REGISTRATION.

[I. L. R. 17 Calc. 786

MUTUAL CREDIT.

See INSOLVENT ACT, s. 39.

[I. L. R. 19 Calc. 146

NATIVE CHIEF, REALIZATION OF REVENUE DUE TO.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, BOMBAY.

[I. L. R. 17 Bom. 681

NATIVE CHRISTIAN.

See DIVORCE ACT, s. 2.

[I. L. R. 14 Mad. 382

[I. L. R. 18 Calc. 252

NATIVE CONVERTS MARRIAGE DISSOLUTION ACT (XXI OF 1866).

See DIVORCE ACT, s. 2.

[I. L. R. 18 Calc. 252

NATIVE INDIAN SUBJECTS.

See JURISDICTION OF CRIMINAL COURT—NATIVE INDIAN SUBJECTS.

[I. L. R. 16 Bom. 178

NATIVE STATES, DECREES OF COURTS OF.

See EXECUTION OF DECREE—DECREES OF COURTS OF NATIVE STATES.

[I. L. R. 15 Bom. 218

NATIVE STATES, RECORD OF COURT ATTESTED BY JUDICIAL OFFICER OF.

See CONFESSION—CONFESSIONS TO MAGISTRATE.

[I. L. R. 12 All 595

NAVIGABLE RIVER.

See ACCRETION.

[I. L. R. 13 Mad. 369

NAWAB NAZIM'S DEBTS ACT (XVII OF 1873).

1.—*Award of Commissioners conclusive—Construction of documents not establishing a charge on immoveable property.*] Commissioners appointed under Act XVII of 1873, by their award, found that an estate was in the possession of the Government for the purpose of upholding the dignity of the Nawab Nazim for the time being, a finding within their competence to make, of which the effect was that the Government held the property freed and discharged from all claims. In a suit against the Government it was alleged that the estate, when in the hands of the Nawab, had been charged with payment of an annuity and arrears in favour of the plaintiff's father on his abandoning the title which he had set up to the property:—*Held*, that the above award, under the Act, would have been a sufficient answer to the claim, even if the charge had originally attached to the estate. But in equity no charge could be created unless there was an intent to charge. Here the documents showed that this payment had not been legally charged upon the property, neither party having contemplated this result, and there having been only a mandate by the Nawab for payment of the annuity out of his treasury. OMRAO BEGUM *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 19 Calc. 584

[L. R. 19 I. A. 95

NAWAB NAZIMS DEBTS ACT (XVII OF 1873)—*concluded.*

2.—*Commissioners, award of—Power of Commissioners notwithstanding alienation of State lands.*] In a suit by the son of the Nawab Nazim of Moorshedabad to recover from a person wrongfully in possession, land which had been found to be a portion of State lands:—*Held*, that the Commissioners appointed under the Nawab Nazim's Debts Act had jurisdiction to declare the land claimed in the suit to be State property notwithstanding the fact that an alienation of such land had taken place before the date of the Commissioners' award. *Omrao Begum* v. *The Government of India*, I. L. R. 9 Calc. 704, followed. HASSAN ALI *v.* CHUTTERPUT SINGH DUGARH.

[I. L. R. 19 Calc. 742

NEGLIGENCE.

See ADMINISTRATOR

[I. L. R. 17 Bom. 637

See CARRIERS.

[I. L. R. 17 Calc. 39

[I. L. R. 18 Calc. 427

See HURT.

[I. L. R. 18 Calc. 49

See MORTGAGE—MARSHALLING.

[I. L. R. 13 Mad. 383

[I. L. R. 15 Mad. 268

See ONUS PROBANDI—RENT, SUITS FOR.

[I. L. R. 12 All. 301

1.—*Suit for damages by parents of a child killed by negligence — Act XIII of 1855 — Death by negligence—Contributory negligence—Liability for negligence of servants—Damages assessment of—Deduction for maintenance of child—Funeral expenses.*] The plaintiff's unmarried daughter, a child of between five and six years old, fell into an open manhole of a sewer in a lane in Bombay on the 20th August 1890, between 4½ and 5 o'clock P.M., and, when her body was recovered, life was extinct. The sewer was vested in the Municipality of Bombay, and was under the control of the Municipal Commissioner by virtue of ss. 220 and 289 of the Bombay Municipal Act of 1888. When such manholes are opened, it is the duty of the Municipal Commissioner under s. 321 of that Act to have them properly fenced and guarded. On the 28th August 1890 the manhole in question was opened for the purpose of inserting a flushing-door in the sewer. From the time the manhole was opened until the occurrence of the accident the deceased child's mother was seated at the corner of the street selling cucumbers about four yards from the manhole in

NEGLIGENCE—*continued.*

question. The hole was at first properly fenced with four timber hurdles about 4 feet high set upright round it at a distance of 2 feet from the hole, secured at the corners with ropes. Soon after 4-30 P.M. the superintendent in charge of the work gave orders to cease work and close the manhole for the night. The accident took place almost immediately afterwards. The Judge found on the evidence that the child fell into the open hole in the interval that elapsed between the taking down of the fence and putting the cover on the hole. What she was doing the instant before she fell, there was nothing to show. She was seen running and playing about the street during the afternoon. Her mother, who was sitting close by, did not see the accident, her attention being at the moment occupied by some customers. She admitted that before the accident occurred she knew the fence was down and the hole open, and she would not have let the child go to it had she been playing beside her:—*Held* (1) that the defendants were guilty of negligence, and that they were liable for the negligence of their servants, although the latter acted contrary to the express orders given by their superior; (2) that although the mother of the child might have been guilty of negligence which contributed to the accident, yet if the defendants could, by the exercise of ordinary care and diligence, have avoided the mischief which happened, her negligence would not excuse them; (3) that, as regards damages, in cases of this nature, distinct evidence of the loss sustained or benefit expected is not necessary. The jury may look at all the circumstances of the case, and especially at the position of the parents and age of the child, and call in aid their own experience in arriving at their conclusions. Where damages are allowed, a reasonable sum should be deducted on account of the maintenance for such period as the child might reasonably have been expected to live with her parents. In an action under Act XIII of 1855 no sum can be awarded in respect of funeral expenses, whether for removal or disposal of the body or for outlay—for ceremonial or obsequial purposes. NARAYEN JETHA *v.* MUNICIPAL COMMISSIONER OF BOMBAY.

[I. L. R. 16 Bom. 254

2.—*Right of support of house by adjoining soil—Principal and agent or contractor—Liability of principal for acts of contractor.*] The plaintiffs were owners of a house consisting of a ground floor and upper story and measuring 77 feet in length. On the south side of the house was a gully, 3 feet 6 inches wide, separating it from another upper-storied house. The plaintiffs in this suit complained that in January 1891 the defendant by his servants dug a trench, 8 feet deep, along the whole length of the gully for the purpose of laying a drain pipe, and that the work was done so negligently that the plaintiffs' house was injured and became in such a dangerous condition that it had to be pulled down. The plaintiffs claimed Rs. 3,996 as damages. The defendant denied the negligence, and alleged that the work was not done by his servants or agents,

NEGLIGENCE—*concluded.*

but by a contractor:—*Held*, that the defendant was liable for the act of his contractor. The work was necessarily attended with risk, and the defendant could not free himself from liability by employing a contractor. The defendant, as well as the contractor, was liable to the plaintiffs. DHONDIBA KRISHNAJI *v.* MUNICIPAL COMMISSIONER OF BOMBAY.

[I. L. R. 17 Bom. 307

NEGOTIABLE INSTRUMENTS ACT (XXVI OF 1881).

———, ss. 4 and 13.

See PROMISSORY NOTE.

[I. L. R. 16 Bom. 689

———, s. 17.

See BILL OF EXCHANGE.

[I. L. R. 15 Bom. 267

———, ss. 37, 39.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

[I. L. R. 13 Mad. 172

———, s. 61.

See HUNDI.

[I. L. R. 14 Mad. 470

———, s. 66.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

[I. L. R. 13 Mad. 172

NEWSPAPER.

———, *Printing presses and Newspaper Act (XXV of 1867), s. 3—Name of printer and publisher.*] A newspaper was printed and published bearing the following words: "Printed and published at Cochin for the Malabar Economic Company at the Company's Goshree Vilasam Press":—*Held*, that these words did not satisfy the requirements of Act XXV of 1867, s. 3. QUEEN-EMPRESS *v.* HARI SHENOY.

[I. L. R. 16 Mad. 443

NEW TRIAL.

See CIVIL PROCEDURE CODE, s. 108.

[I. L. R. 21 Calc. 269

See SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE—NEW TRIALS AND REVIEWS.

[I. L. R. 18 Calc. 83

See SMALL CAUSE COURT, PRESIDENCY TOWNS — PRACTICE AND PROCEDURE—NEW TRIALS.

[I. L. R. 17 Bom. 507

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE — REFERENCE TO HIGH COURT.

[I. L. R. 15 Mad. 179

NEXT FRIEND.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 17 Calc. 488
[I. L. R. 13 Mad. 197

NON-APPEARANCE, DISMISSAL FOR.

See RES JUDICATA — JUDGMENTS ON PRELIMINARY POINTS.

[I. L. R. 12 All. 539

NON-JOINDER OF PARTIES.

See APPELLATE COURT — OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[I. L. R. 14 Mad. 498

See CO-SHARERS—SUITS WITH RESPECT TO THE JOINT PROPERTY.

[I. L. R. 15 Mad. 111

See LIMITATION ACT, 1877, s. 22.

[I. L. R. 15 Bom. 297
[I. L. R. 17 Bom. 29, 413

See PARTIES—ADDING PARTIES TO SUITS —PLAINTIFFS.

[I. L. R. 14 Mad. 489
[I. L. R. 17 Bom. 29

NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873).

——, s. 3.

See COLLECTOR.

[I. L. R. 15 All. 410

——, s. 107.

See COLLECTOR.

[I. L. R. 15 All. 410

——, s. 113.

See JURISDICTION OF CIVIL COURT — RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 13 All 309

——, ss. 113, 114.

See APPEAL—N.-W. P. ACTS.

[I. L. R. 14 All. 500

See DECREE—FORM OF DECREE—GENERAL CASES.

[I. L. R. 14 All. 500

——, ss. 146, 148.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[I. L. R. 14 All. 273

——, ss. 166, 168 and 188.

See PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS.

[I. L. R. All. 224

NORTH-WESTERN PROVINCES LAND REVENUE ACT (XIX OF 1873)—*concld.*

——, s. 221.

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N.-W. P. LAND REVENUE ACT.

[I. L. R. 14 All. 347

——, s. 241.

See JURISDICTION OF CIVIL COURT — RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 13 All. 17

——, s. 243.

See RULES MADE UNDER ACTS.

[I. L. R. 12 All. 564

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881).

——, s. 9.

See JURISDICTION OF CIVIL COURT — RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 14 All. 381

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT, OR SURRENDER, OF TENURE.

[I. L. R. 13 All. 396

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[I. L. R. 12 All. 419
[I. L. R. 15 All. 219, 231

——, s. 10.

See JURISDICTION OF CIVIL COURT — RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 13 All. 17

See RIGHT OF SUIT—ACCRUAL OF RIGHT.

[I. L. R. 15 All. 399

——, s. 31.

See LANDLORD AND TENANT—ABANDONMENT, RELINQUISHMENT, OR SURRENDER, OF TENURE.

[I. L. R. 13 All. 396

——, s. 36.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 15 All. 189

——, s. 56.

See JURISDICTION OF CIVIL COURT — RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 12 All. 409

——, s. 56.—*Landholder and tenant—Landholder's lien for rent—"Rent payable"—"Arrear of rent due."*] The first paragraph of s. 56 of Act No. XII of 1881 applies not only where there

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881), s. 56—*concluded.*

is rent in arrear due from the cultivator to his landlord, but also where rent is accruing due in respect of the period during which the produce was being grown. Hence, where anyone, except the landlord, wishes to bring to sale the produce of a cultivator, he must, in order to avoid the prohibition contained in s. 56 of Act XII of 1881, tender to the immediate landlord of the cultivator the amount, if any, for which the landlord might, on the next ensuing sale day, distrain the produce for arrears of rent. JAGAN NATH PRASAD *v.* BHIKA RAM.

[I. L. R. 15 All. 375

——, ss. 83, 85.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N.-W. P.

[I. L. R. 12 All. 409

——, s. 93.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[I. L. R. 14 All. 273

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W.P.

[I. L. R. 12 All. 409, 419

[I. L. R. 14 All. 381

[I. L. R. 15 All. 387

See JURISDICTION OF REVENUE COURT—N.-W.P. RENT AND REVENUE CASES.

[I. L. R. 15 All. 137

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[I. L. R. 12 All. 419

See ONUS PROBANDI—RENT, SUITS FOR.

[I. L. R. 12 All. 301

See VALUATION OF SUIT—APPEALS.

[I. L. R. 15 All. 363

——, s. 94.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 12 All. 419

[I. L. R. 14 All. 223

——, s. 95.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 13 All. 17

[I. L. R. 15 All. 115, 387

——, s. 148

See APPEAL—N.-W. P. ACTS.

[I. L. R. 13 All. 364

——, s. 161.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 14 All. 381

NORTH-WESTERN PROVINCES RENT ACT (XII OF 1881)—*concluded.*

——, s. 177.

See PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS.

[I. L. R. 13 All. 224

——, ss. 177, 178, 181.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[I. L. R. 14 All. 273

——, s. 183.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 12 All. 198

——, s. 189.

See APPEAL—N.-W. P. ACTS.

[I. L. R. 13 All. 193

[I. L. R. 14 All. 50

——, s. 199.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 12 All. 198

——, s. 206.

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[I. L. R. 12 All. 419

——, s. 209.

See ONUS PROBANDI—RENT, SUITS FOR.

[I. L. R. 12 All. 301

NORTH-WESTERN PROVINCES RENT ACT AMENDMENT ACT (XIV OF 1886).

——, s. 5.

See APPEAL—N.-W. P. ACTS.

[I. L. R. 13 All. 193

[I. L. R. 14 All. 50

NOTICE.

——, Constructive Notice.

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[I. L. R. 21 Calc. 116

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[I. L. R. 16 Mad. 301

—— of appeal.

See PROCESS, SERVICE OF.

[I. L. R. 16 Bom. 117

—— of application.

See CLAIM TO ATTACHED PROPERTY.

[I. L. R. 16 Bom. 700

See CUSTODY OF CHILD.

[I. L. R. 18 Calc. 473

NOTICE—*continued.*

——— of application—*concluded.*

See DIVORCE ACT, s. 16.

[I. L. R. 18 Calc. 443, 539

See EXECUTION OF DECREE—STAY OF EXECUTION.

[I. L. R. 15 Bom. 536

———, of claim to remission of tax.

See MADRAS TOWNS IMPROVEMENT ACT, s. 51.

[I. L. R. 14 Mad. 467

——— of dishonour.

See HUNDI.

[I. L. R. 14 Mad. 470

——— of distraint.

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 103.

[I. L. R. 14 Mad. 467

——— of execution.

See EXECUTION OF DECREE—EXECUTION BY AND AGAINST REPRESENTATIVES.

[I. L. R. 16 Bom. 636

See EXECUTION OF DECREE—NOTICE OF EXECUTION.

[I. L. R. 20 Calc. 370

[I. L. R. 21 Calc. 19

See LIMITATION ACT, 1877, ART. 179—NOTICE OF EXECUTION

[I. L. R. 15 All. 84

——— of foreclosure.

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE.

[I. L. R. 12 All. 189

——— of hearing.

See REVIEW—CIVIL CASES—REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE.

[I. L. R. 16 Bom 603

——— of incumbrance.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 15 Mad. 303, 412

See MORTGAGE—MARSHALLING.

[I. L. R. 13 Mad. 383

[I. L. R. 15 Mad. 268

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[I. L. R. 13 All. 432

See REGISTRATION ACT, s. 48.

[I. L. R. 13 Mad. 324

NOTICE—*continued.*

——— of incumbrance—*concluded.*

See REGISTRATION ACT, s. 50.

[I. L. R. 16 Mad. 148

See VENDOR AND PURCHASER—NOTICE.

[I. L. R. 17 Bom. 741

——— of proceedings in Criminal Court.

See POSSESSION, ORDER OF CRIMINAL COURT AS TO — PARTIES TO PROCEEDINGS.

[I. L. R. 20. Calc. 520

———, of purchase.

See SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

[I. L. R. 20 Calc. 25

——— of sale.

See MORTGAGE—POWER OF SALE.

[I. L. R. 17 Bom. 711

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — IRREGULARITY.

[I. L. R. 17 Calc. 152

[I. L. R. 18 Calc. 422, 496

——— of sale, publication and service of.

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R. 17 Calc. 474

[I. L. R. 18 Calc. 363

[I. L. R. 19 Calc. 699, 703

[I. L. R. 20 Calc. 86

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R. 18 Calc. 125

[I. L. R. 21 Calc. 354

——— of sale, service of.

See PUBLIC DEMANDS RECOVERY ACT, s. 2.

[I. L. R. 21 Calc. 350

See SALE FOR ARREARS OF RENT—SETTING ASIDE SALE — OTHER GROUNDS.

[I. L. R. 20 Calc. 746

——— of suit.

See BOMBAY MUNICIPAL ACT, 1888, s. 527.

[I. L. R. 17 Bom. 307

See CALCUTTA MUNICIPAL ACT, 1876, s. 357.

[I. L. R. 18 Calc. 91

See FOREIGN COURT, JUDGMENT OF—

[I. L. R. 13 Mad. 496

NOTICE—*concluded.*

——— of suit—*concluded.*

See MADRAS LOCAL BOARDS ACT, s. 27.

[I. L. R. 16 Mad. 317

See MADRAS MUNICIPAL ACT, 1884, s. 433.

[I. L. R. 14 Mad. 386

See PUBLIC OFFICER.

[I. L. R. 14 Bom. 395

——— of transfer of case.

See JURISDICTION—QUESTION OF JURISDICTION — WAIVER OF OBJECTION TO JURISDICTION.

[I. L. R. 13 Mad. 211

——— of transfer of tenure.

See BENGAL TENANCY ACT, s. 12.

[I. L. R. 19 Calc. 17

——— to public.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[I. L. R. 14 Bom. 165

——— to quit.

See CASES UNDER LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

"NOTIFICATION," MEANING OF.

See BENGAL MUNICIPAL ACT, 1884, s. 2.

[I. L. R. 20 Calc. 699

NOTIFICATION OF GOVERNMENT OF INDIA.

———, No. 1288 of 3rd March 1882.

See STAMP ACT, 1879 s. 3, CL. 10.

[I. L. R. 18 Calc. 39

[I. L. R. 13 All. 66

See STAMP ACT, 1879, s. 61.

[I. L. R. 18 Calc. 39

———, No. 2955 of 1st December 1882.

See STAMP ACT, 1879, s. 3, CL. 10.

[I. L. R. 13 All. 66

———, No. 173 of 14th March 1889.

See REFORMATORY SCHOOLS ACT, s. 22.

[I. L. R. 15 All. 208

NUISANCE. *Col.*

1. Under Criminal Procedure Code ... 766
2. Public Nuisance under Penal Code ... 767

See BENCH OF MAGISTRATES.

[I. L. R. 13 Mad. 142

See FERRY.

[I. L. R. 18 Calc. 652

See LIMITATION ACT, 1877, s. 23.

[I. L. R. 18 Calc. 652

NUISANCE—*continued.*

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 222.

[I. L. R. 15 Mad. 91

(1) UNDER CRIMINAL PROCEDURE CODE.

1.—*Criminal Procedure Code* (*Act X of* 1882), *s.* 133—*Removal of obstruction in public way—Question of title—Bonâ fides of claim of title, right of Magistrate to enquire into—Jurisdiction of Civil Court.*] In a proceeding under s. 133 of the Criminal Procedure Code for the purpose of compelling the removal of an obstruction from a public way where a *bonâ fide* question as to the way being public is raised, there is no jurisdiction to make an order under the section, and the question should be left for determination by the Civil Court. To have this effect, however, the claim must be *bonâ fide* and not a mere pretence to oust jurisdiction, and it is for the Magistrate to say whether the claim be *bonâ fide* or not. QUEEN-EMPRESS *v.* BISSESSUR SAHU.

[I. L. R. 17 Calc. 562

2.—*Criminal Procedure Code* (*Act X of* 1882), *ss.* 144, 439 — *Order forbidding person from collecting rent—Superintendence of High Court—Charter Act* (24 *and* 25 *Vict., c.* 104,) *s.* 15—*Revision.*] An order forbidding a person who claimed an interest in certain properties from collecting any rent from the ryots on the properties, does not fall within s. 144 of the Code of Criminal Procedure. Such an order is therefore made without jurisdiction, and may be set aside under the High Court's powers of revision and superintendence conferred by s. 439 of the Criminal Procedure Code and s. 15 of the Charter Act. Chapter XI of the Code of Criminal Procedure refers to interference or dealing of some kind with the land itself or with something erected or standing upon it, and is directed to the prevention or direction by prompt order of some definite act on the part of an individual, so that injury or nuisance may not be caused. ANANDA CHANDRA BHUTTACHARJEE *v.* STEPHEN.

[I. L. R. 19 Calc. 127

3.—*Criminal Procedure Code* (*Act X of* 1882), *s.* 144—*Magistrate's authority to prohibit the public generally from giving caste-dinners—Public notice.*] Owing to the prevalence of cholera, the District Magistrate of Broach issued an order, in the form of a proclamation, under s. 144 of the Criminal Procedure Code (Act X of 1882), forbidding the public generally to give caste-dinners in the city. The order was posted in different quarters of the city, including the street in which the accused had his dwelling-house. A few days after the promulgation of this order, the accused gave a feast in a private house to about 500 people of his caste. He was thereupon convicted of disobedience to an order duly promulgated by a public servant under s. 188, cl. (*b*), of the Penal Code, and sentenced to a fine of Rs. 35:—*Held*, reversing the conviction and sentence, that the District Magistrate's order was, both in its

NUISANCE—*concluded.*

(1) UNDER CRIMINAL PROCEDURE CODE —*concluded.*

substance and in its manner of publication, illegal, as being beyond the powers conferred by s. 144 of the Code of Criminal Procedure. The power of the Magistrate under that section is confined to the direction to a particular person to abstain from acts of a certain character, or to the public generally to abstain from similar acts when frequenting a *particular* place. QUEEN-EMPRESS *v.* LAKHMIDAS MAKANDAS.

[I. L. R. 14 Bom. 165

(2) PUBLIC NUISANCE UNDER PENAL CODE.

4.—*Penal Code, ss.* 109, 290—*Keeping a gaming-house—Abetment.*] The lessee of a house, who permitted disorderly people to use it for gambling and thereby caused annoyance to the public, was convicted of an offence under the Penal Code, s. 290; it appeared, however, that the accused had not engaged the house with the object of letting it out as a gaming-house:—*Held*, that the conviction was right. QUEEN-EMPRESS *v.* THANDAVARAYUDU.

[I. L. R. 14 Mad. 364

5.—*Penal Code* (*Act XLV of* 1860), *ss.* 268, 283-290—*Obstruction in tidal navigable river.*] The mere fact of an encroachment on a tidal navigable river does not necessarily amount to a public nuisance so as to render a person causing such encroachment liable to punishment under s. 290 of the Penal Code, but there must be evidence that such encroachment causes one of the results specified in s. 268. *In the matter of the Petition of Umesh Chandar Kar*, I. L. R. 14 Calc. 656, considered and commented on. The rule laid down in that case to the effect that any encroachment, however slight, on a tidal navigable river, constitutes an offence under s. 290 is too widely stated. Each case should be determined on its own merits, and a decision arrived at as to whether the encroachment has caused an obstruction or not. The petitioner was charged with having erected a *jag* in a tidal navigable river, constructed of trees and dams, and thereby having committed offences under ss. 283 and 290 of the Penal Code. There was evidence to show that the *jag* was about 45 cubits long and 20 cubits broad, and that it was erected on the silted side of the river where it was about 300 *hats* broad, and that it did not obstruct the ordinary navigation of the river. The lower Court held that the *jag* could not but cause an obstruction, and convicted the petitioner under s. 283:—*Held*, that as there was no evidence to show that the petitioner had caused any danger, obstruction or injury to any person in any public way or line of navigation, the conviction under that section could not be sustained. *Held*, further, that he could not be convicted under s. 290, as there was no evidence of any obstruction to the ordinary navigation of the river. JUGAL DAS DALAL *v.* QUEEN-EMPRESS.

[I. L. R. 20 Calc. 665

OATHS ACT (X OF 1873).

———, s. 5.

See FALSE EVIDENCE.

[I. L. R. 16 Mad. 421

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATE.

[I. L. R. 16 Mad. 421

———, s. 6.

See s. 13.

[I. L. R. 16 Mad. 105

See FALSE EVIDENCE.

[I. L. R. 19 Calc. 355

———, s. 9.—*Vakil, authority of, to bind client—Pleader—Agent holding a power-of-attorney authorizing him to act and appear for a party to a suit.*] An agent, holding a power-of-attorney authorizing him to act and appear for a party to a suit, cannot bring the suit to a close by offering to be bound by the oath of the opposite party in a particular form. Nor can a pleader so bind his client. Under the Indian Oaths Act (X of 1873) no person but the party himself can make such an offer as is contemplated in s. 9. SADASHIV RAYAJI *v.* MARUTI VITHAL.

[I. L. R. 14 Bom. 455

———, ss. 10, 11.—*Referee's depositions inadequate for decision of question referred—Appeal after death of referee—Practice.*] Where a case had been decided under the provisions of ss. 10 and 11 of the Oaths Act (X of 1873) with reference to the depositions of a person appointed by agreement of the parties as referee, and where, after the death of the referee, on an appeal being preferred against the decree so based upon those depositions, it was found that the said depositions did not fully cover the questions in issue between the parties:—*Held*, that the case should be remanded to the lower Court for disposal according to the usual procedure. MAHABIR PRASAD MISR *v.* MAHADEO DAT MISR.

[I. L. R. 13 All. 386

s. 11.—*Agreement to be bound by oath of a particular person — Discretion of Court.*] The Oaths Act (X of 1873) does not constrain a Court to pass a decision in favour of a particular party. If a party to a suit says he will be bound by the oath of a particular person, s. 11 of the Act only means that *pro tanto* he will be bound, *i.e.*, so far as the matter of that evidence is concerned, and that evidence will be conclusive as to its truth as against him throughout the whole of the litigation. But it in no way compels the Court trying the case to accept it as conclusive. *Vasudeva Shanbog* v. *Naraina Pai* I. L. R. 2 Mad. 356, approved. MUHAMMAD ZAHUR *v.* CHEDA LAL.

[I. L. R. 14 All. 141

———, s. 13.

See FALSE EVIDENCE.

[I. L. R. 19 Calc. 355

OATHS ACT (X OF 1873), s. 13—*concluded.*

1.—s. 13.—*Omission to administer an oath or affirmation—Witness, competency of—Child, evidence of.*] At a trial on a charge of murder one of the witnesses for the prosecution was a girl about ten years old. The Sessions Judge allowed her to be examined without administering any oath or affirmation, as it was found that she did not understand the nature of either. The prisoner's counsel objected to the admissibility of her statements, but the objection was overruled, and the prisoner was convicted of murder and sentenced to death:—*Held, per* JARDINE, J., that the girl's evidence was admissible. The "omission" referred to in s. 13 of the Indian Oaths Act (X of 1873) includes any kind of omission, and is not restricted to accidental or negligent omissions. *Queen* v. *Sewa Bhogta*, 14 B. L. R. 294, 23 W. R. Cr. 1, approved; and *Queen-Empress* v. *Maru*, I. L. R. 10 All. 207, dissented from. QUEEN-EMPRESS *v.* SHAVA.

[I. L. R. 16 Bom. 359

2.—s. 13 and s. 6.—*Examination as witness of a child of tender years—Intentional omission to administer affirmation.*] A child, aged about six years, was called as a witness in a Sessions Court. The Judge satisfied himself of his intellectual capacity to give evidence, but intentionally omitted to administer an affirmation on the ground that he was of too tender years to render any attempt to bind his conscience expedient or practically operative. The Judge did not examine the child for the purpose of eliciting whether he knew it was wrong not to tell the truth, or whether he knew the difference between right and wrong, but he told him to tell the truth and permitted him to be examined as a witness:—*Held*, that the child should have been affirmed. *Quære.*—Whether the omission to affirm the child having been intentional on the part of the Judge, the case came within the provisions of Oaths Act, s. 13. QUEEN-EMPRESS *v.* VIRAPERUMAL.

[I. L. R. 16 Mad. 105

——, s. 14.

See FALSE EVIDENCE.

[I. L. R. 19 Calc. 355

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[I. L. R. 15 Bom. 297

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[I. L. R. 13 All. 580

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[I. L. R. 13 Mad. 492

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[I. L. R. 15 Bom. 407

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[I. L. R. 16 Bom. 119

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[I. L. R. 13 All. 380

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[I. L. R. 17 Calc. 684

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[I. L. R. 17 Calc 926

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See JURISDICTION OF CRIMINAL COURT—NATIVE INDIAN SUBJECTS.

[I. L. R. 16 Bom. 178

OFFENCE COMMITTED ON THE HIGH SEAS.

Jurisdiction of Criminal Court—Law applicable to offence committed within three miles of Goa—Treaty Act (IV of 1880)—Statute 30 and 31 Vic., c. 124, s. 11—Statute 37 and 38 Vic., c. 27—Procedure.] The rule laid down in *Regina* v. *Elmstone* (7 Bom. Cr. 89), to the effect that English and not Indian law is applicable to offences committed on the high seas, is altered by Statute 37 and 38 Vic., c. 27, which provides that such offences shall be tried and punished according to the local law. The accused, who was captain of a native craft, was charged with having dishonestly sold his cargo and scuttled his ship in the course of a voyage from Aleppy to Bombay. The accused was arrested in the Ratnagiri District, and committed for trial to the Sessions Judge of Ratnagiri, who convicted him under ss. 407 and 437 of the Penal Code and sentenced him to five years' rigorous imprisonment. On appeal, the accused contended that the Sessions Judge of Ratnagiri had no jurisdiction to try the case: 1st, because the first offence, if it took place at all, was committed within the territorial waters of Goa; and, 2ndly, because the offence, if committed on the high seas, could only be tried according to the law of England and not according to the Penal Code:—*Held* (1) that the Court at Ratnagiri had jurisdiction. If the offence were committed within three miles of Goa, the Treaty Act (IV of 1880) between England and Portugal as regards the Goa territory conferred the right to try such cases in British India. (2) If the offence were committed beyond the three-mile limit and on the high seas, the Court had jurisdiction, and the Penal Code applied under the provisions of Statute 30 and 31 Vic., c. 124, s. 11, and Statute 37 and 38 Vic., c. 27. QUEEN-EMPRESS *v.* ABDOOL RAHIMAN.

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[I. L. R. 14 Mad. 365

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[I. L. R. 15 Mad. 315

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[I. L. R. 19 Calc. 444

(1) CLAIM TO ATTACHED PROPERTY.

1.—*Suit to establish right to attach—Civil Procedure Code, s.* 283—*Right of defendant to set up title of third person.*] In a suit brought under s. 283 of the Civil Procedure Code (Act XIV of 1882) to establish the right to attach property, it is for the plaintiff to prove that the property in question is the property of the judgment-debtor. The *onus* of proof is upon him. He can have no right to attach property which is proved either never to have belonged to his judgment-debtor, or having been his, to have passed out of his possession and ownership, and become, in law, the property of others prior to the time at which attachment is sought. The defendant in defending such a suit may, therefore, rely on the title of a third person. ADAM ISUFBHAI *v.* JAMNADAS RANCHORDAS.

[I. L. R. 17 Bom. 94

(2) DEEDS, SUITS TO ENFORCE OR SET ASIDE.

2.—*Deed of gift and endowment executed by Mahomedan widow in favour of agent—Fiduciary relationship—Burden of proving absence of undue influence.*] An instrument executed by a widow, after setting apart the rental of villages belonging to her as her patrimony to defray the expenses of her and her deceased husband's tombs, gave to her managing agent who was her sole adviser the management of the endowment in perpetuity with the residue, after the above expenditure should have been met, for himself, so that a large surplus would have remained each year in his hands and he would have been the person substantially interested:—*Held*, that this transaction was within the well-recognized principle that every *onus* is thrown upon a person filling a fiduciary character towards another of showing conclusively that he has acted honestly and *bonâ fide*, without influencing the donor who has acted independently of him. In a suit by the agent's representative to have the gift enforced against the widow's successor in the estate, this burden had not, in the opinion of the Courts below, with which their Lordships concurred, been sustained, and it was held that the gift had been rightly set aside. WAJID KHAN *v.* EWAZ ALI KHAN.

[I. L. R. 18 Calc. 545
[L. R. 18 I. A. 144

3.—*Suit for cancellation of instrument—Act I of* 1877 (*Specific Relief Act*), *s.* 39—*Fiduciary relationship—Undue influence—Gift to spiritual adviser—Act I of* 1872 (*Evidence Act*), *s.* 111.] In a suit under s. 39 of the Specific Relief Act (I

ONUS PROBANDI—*continued.*

(2) DEEDS, SUITS TO ENFORCE OR SET ASIDE—*continued.*

of 1877) for cancelment of a deed of gift executed by the plaintiff in favour of the defendant, the plaintiff was a Chatri by caste, well advanced in years, and the defendant was his *guru* or spiritual adviser, a Brahman held in high consideration in the locality where he resided. The gift comprised the whole of the plaintiff's property, and the only reason for its execution was the plaintiff's desire to secure benefits to his soul in the next world, and his having heard the defendant recite the holy book called Bhagwat. Almost immediately after execution of the deed the plaintiff repudiated it, and sued for its cancellation on the ground of fraud:—*Held*, that having regard to the fiduciary relation subsisting between the parties, the improvidence of the gift, the absurdity of the reason alleged for it, and the principle recognised by s. 111 of the Evidence Act (I of 1872), the burden rested upon the defendant to show that the transaction was made without undue influence and in good faith; and, in the absence of such proof, the plaintiff was entitled to obtain cancellation of the deed. *Sital Prasad* v. *Parbhu Lal*, I. L. R. 10 All. 535, referred to. MANNU SINGH *v.* UMADAT PANDE.

[I. L. R. 12 All. 523

4.—*Voluntary deed—Suit by settlor to set aside his deed.*] One *M* (the original plaintiff), was priest in the family of the first and second defendants, and was treated with much kindness by the first defendant (*N*), upon whom he chiefly relied for advice in worldly matters. A sum of Rs. 30,000 which was the bulk of his property was in deposit in the defendants' firm at interest. Early in 1887 he became ill, and in June 1887 he expressed a wish to execute a trust-deed and an English will. He gave instructions to *N* for the trust-deed. By this deed, which contained no power of revocation, he settled Rs. 30,000 upon the first and second defendants (who were uncle and nephew), as trustees to perform his funeral ceremonies and to carry out certain religious observances and to pay two annuities, each of Rs. 25, and with the residue to found a Sanskrit class. The deed provided for the payment, during his lifetime, of a sum of Rs. 100 *per mensem* for his maintenance and expenses, or such larger sum as he might require for such purposes, but in other respects it was not to come into operation until after his death. The will of even date gave certain property to his wife, and subject to this bequest gave the residue of his property to his sister. After receiving instructions for these documents *N* took them to an attorney. From these instructions drafts were prepared, which were read over to *M* in his room by the attorney's managing clerk. Neither drafts, nor instructions, nor the documents themselves were, however, left with *M*. The drafts were then engrossed, *M* having made some trifling corrections in them. On the 23rd June 1887 he attended at the house of the attorney. The documents were explained to him by the attorney, and were interpreted to him by a High Court interpreter. *M* was then examined by a medical man with a view to ascertain whether he was capable of understanding what he was doing. *M* then executed the trust-deed and the will, and both were then duly attested. At the same time *M* signed the accounts in the defendants' books, and the balance of the money, which stood to his credit over and above the Rs. 30,000 comprised in the deed, was produced and made over to him, and he made it over to *N* to be kept by him personally. Shortly after this, *M's* sister and her son came to Bombay, and he fell under their influence. He became dissatisfied with what he had done with the Rs. 30,000, and on the 21st November 1887 he executed a will by which he purported to revoke the deed and the will of the 23rd June, and he left the whole of his property to his sister. On the 2nd September 1888 his nephew took him to Surat, and on the 14th September 1888 at Surat he executed a deed revoking the trust-deed of the 23rd June 1887. He also signed instructions and a power-of-attorney under which this suit was filed. He died subsequently to the filing of the suit, and his sister and executrix became plaintiff. The plaint prayed that the deed of the 23rd June 1887 should be set aside on the ground of undue influence, &c., but the personal charges against the defendants were abandoned at the hearing:—*Held*, that the deed must be set aside on the ground that the circumstances of the case threw upon the defendants the burden of showing that *M* understood the effect of the settlement and its finality. This they had failed to do. The facts of the case brought it within the principles deducible from *Anderson* v. *Elsworth* 3 Giff. 154; *Forshaw* v. *Welsby*, 30 Beav. 243; and *Wollaston* v. *Tribe*, L. R. 9 Eq. 44. BAI MANIGAVRI *v.* NARONDAS CALLIANDAS.

[I. L. R. 15 Bom. 549

(3) HINDU LAW.

(*a*) ALIENATION.

5.—*Necessity for alienation—Proof of execution of deed by Hindu widow.*] The plaintiff, to make good his claim against the estate of his deceased debtor, relied upon a document purporting to have been signed by the latter's widow, since then also deceased. The Court of First Appeal, however, found that there had been no actual execution of the instrument by the widow, and dismissed the suit. The burden of proving due execution by the widow lay upon the plaintiff, who relied upon it as binding the estate which she represented, a matter commented on in *Kameswar Pershad* v. *Run Bahadur Singh*, I. L. R. 6 Calc. 843: L. R. 8 I. A. 8. RAMRATAN SUKAL *v.* NANDU.

[I. L. R. 19 Calc. 249
[L. R. 19 I. A. 1

(4) LANDLORD AND TENANT.

6.—*Transfer of Property Act (IV of 1882), ss. 106, 108—Transferability of tenancy—Suit by zemindar to set aside a Court-sale of his ryot's interest.*] A zemindari ryot mortgaged the land

ONUS PROBANDI—*continued.*

(4) LANDLORD AND TENANT—*concluded.*

comprised in his holding, and the mortgagee, having sued and obtained a decree on his mortgagee, attached the mortgagor's interest in the land and purchased it at the Court-sale held in execution of his decree. The zemindar, who had intervened unsuccessfully in execution, now sued to set aside the sale and to eject the decree-holder and the judgment-debtor from the land. Neither party adduced evidence:—*Held*, that there was no presumption that the tenant was a tenant-at-will, nor was there a presumption that the tenancy was not transferable—such presumptions being contrary to ss. 106 and 108 of the Transfer of Property Act respectively. The burden of proof therefore lay on the plaintiff and had not been discharged, and the suit must consequently be dismissed. APPA RAU *v.* SUBBANNA.

[I. L. R. 13 Mad. 60

7.—*Suit for ejectment—Right of occupancy.*] In an ejectment suit by a landlord against his tenant the plaintiff cannot succeed unless he shows that under the terms of the tenancy and in the circumstances that exist he has a right to eject the defendant, although the latter may allege and fail to establish a right of permanent occupancy. VENKATACHARLU *v.* KANDAPPA.

[I. L. R. 15 Mad. 95

8.—*Ejectment, suit for — Occupancy-rights—Madras Rent Recovery Act (Madras Act VIII of 1865), s. 12.*] A zemindarni having given to the defendant, who was a cultivating ryot in the zemindari, a notice to quit, now sued to eject him from his holding. The defendant pleaded that he and his ancestors had been *jirayati* ryots from time immemorial, and it was found that their holding had lasted at least one hundred and fifty years. The defendant had executed and delivered to the plaintiff a *muchalka* for one year, and he had made no default in payment of rent:—*Held*, that the *onus* was on the plaintiff, and as she had failed to prove that the defendant's tenancy had commenced under her or her ancestors, the suit should be dismissed. VENCATA MAHALAKSHMAMMA *v.* RAMAJOGI.

[I. L. R. 16 Mad. 271

(5) LIMITATION AND ADVERSE POSSESSION.

9.—*Limitation Act (XV of 1877), Sch. II, Arts. 142, 144—Boundaries, dispute as to—Ownership of land reclaimed from a bhil contested between proprietors of contiguous estates—Prior possession of land by one of two claimants—Presumption as to continuance of possession of land by original owner, limitation being pleaded by party in possession.*] In suits relating to disputed boundaries where the decision of the lower Court as to the ownership involves questions of the correctness of surveys, maps, recorded description, and other such evidence, the appellant should do more than show points requiring explanation. He should be prepared to show in what respect the decision has been wrong in regard to the evidence, and what other course would be right. The question was as to the

ONUS PROBANDI—*continued.*

(5) LIMITATION AND ADVERSE POSSESSION—*continued.*

ownership of land reclaimed from a *bhil* within the confines of one or other of two adjoining revenue *mehals*, the one belonging to the plaintiff, the other to the defendants, and involved the identification of the land in suit with some that had been covered with water, but of which the plaintiff's possession, with title, had been affirmed in proceedings of the revenue survey in 1857. In consequence of the nature and condition of the land there was no evidence of any act of possession done by either party during the first two years of the twelve immediately preceding the date of the institution of the suit, and during the last ten years the defendants had been in possession. The latter having tried and failed to establish adverse possession in themselves, contended that even if the plaintiff's possession had been shown to have existed in 1857, he could not succeed without his showing that his possession remained till later than the 9th April 1869, the suit having been filed on 9th April 1881, or unless he proved some act of dispossession by the defendants within that period:—*Held*, that the presumption was in favour of the plaintiff's possession, which had been with apparent title, having in fact continued over the two years in question, as to which continuance there was no evidence to the contrary. If the burden was on the plaintiff to show possession down to within twelve years of suit, it had been discharged. RAJKUMAR ROY *v.* GOBIND CHUNDER ROY.

[I. L. R. 19 Calc. 660

[L. R. 19 I. A. 140

10.—*Limitation Act (XV of 1877), Sch. II, Arts. 142, 144—Burden of proof.*] The plaintiff, who was the sister of the defendant, sued in 1888 to recover from him a moiety of a *paramba* purchased by them jointly in 1877. In 1878 the plaintiff went to live elsewhere, but, from time to time, returned and spent a few days with the defendant on the land in suit. The defendant pleaded limitation:—*Held*, that the Limitation Act, Sch. II, Art. 144, applied to the suit, and the burden of proving adverse possession lay on the defendant. ALIMA *v.* KUTTI.

[I. L. R. 14 Mad. 96

11.—*Limitation Act (XV of 1877), Arts. 142 and 144.*] In cases falling under Art. 142 of the Limitation Act the plaintiff must at the outset show possession within twelve years, and cannot rest merely on a proof of title; while in cases falling under Art. 144 the plaintiff may rest content with proof of title only in the first instance, and the burden lies on the defendants to show that they have had a possession inconsistent with the title of the plaintiff for more than twelve years before suit. The plaintiff sued to recover possession of certain land, together with mesne profits until recovery of possession, alleging that he had obtained possession under his sale and that his possession was obstructed by the defendants:—*Held*, that the suit fell under Art. 142 and not 144, of the Limitation Act and that

ONUS PROBANDI—*continued.*

(5) LIMITATION AND ADVERSE POSSESSION—*concluded.*

it was for the plaintiff to show that he, or those under whom he claimed, had been in possession within twelve years before suit. *Rao Karan Singh* v. *Bakar Ali Khan*, I. L. R. 5 All 1: L. R. 9 I A. 99; and *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi*. I. L. R. 16 Calc. 473: L. R. 16 I. A. 23, explained. FAKI ABDULLA *v.* BABAJI GUNGAJI.

[I. L. R. 14 Bom. 458

12.—*Limitation Act* (*XV of* 1877), *Art.* 142—*Sale while vendor is out of possession—Adverse possession.*] In a suit brought by a vendee to recover possession of immoveable property which was not in the possession of his vendor at the time of the sale, the defence having raised the point of adverse possession for more than twelve years:—*Held*, that the *onus* lay upon the plaintiff to show that the claim was not barred by the defendant's adverse possession by proving that his vendor had been in possession within twelve years before the date of sale under Art. 142, Sch. II of the Limitation Act. KASHINATH SITARAM OZE *v.* SHRIDHAR MAHADEV PATANKAR

[I. L. R. 16 Bom. 343

13.—*Suit for possession of immoveable property—Question of title—Limitation Act, s.* 28.] Where a suit for the recovery of possession of immoveable property is resisted by a plea of adverse possession for more than twelve years, the question of limitation becomes a question of title, and it lies upon the plaintiff in the first instance to give satisfactory *primâ facie* evidence of his possession within twelve years of the suit. *Mohima Chunder Mozoomdar* v. *Mohesh Chunder Neoghi*, I. L. R. 16 Calc. 473; and *Parmanand Misr* v. *Sahib Ali*, I. L. R. 11 All. 438, referred to. JAFAR HUSAIN *v.* MASHUQ ALI.

[I. L. R. 14 All. 193

(6) MONEY LENT.

14.—*Failure to prove an alleged transaction of lending money.*] Upon the evidence the decision of the High Court was affirmed as to a question of fact, *viz.*, whether the defendant's deceased father had, or had not, in his lifetime, in consideration of a payment to his order by the plaintiff, promised repayment. The High Court, reversing the decree of the first Court, had found that there had been no sufficient proof of the alleged transaction. This was the conclusion also on this appeal; and, although it was possible that the money might (as it was indicated in the judgment) have been wrongly obtained from the plaintiff by persons about him, it was not shown to have been received by the alleged borrower. LACHMI PRASAD *v.* NARENDRO KISHORE SINGH.

[I. L. R. 14 All. 169

[L. R. 19 I. A. 9

ONUS PROBANDI—*continued.*

(7) POSSESSION AND PROOF OF TITLE.

15.—*Right to begin—Adoption, proof of—Proof of loss, and admission of secondary evidence, of a document alleged to have been executed—Evidence Act* (*I of* 1872), *s.* 65.] A suit for possession by right of inheritance was brought by a claimant, alleging himself to be the heir, against the alleged adopted son of the last male owner, denying that an adoption purporting to be made by the widow had been duly authorized by the deceased. The Court of First Instance called upon the defendant to prove his title as a son by adoption, notwithstanding that the plaintiff was out of possession, and could not have succeeded, in the event of the defendant's failure to prove it, without first proving his own title as collateral heir by descent: thus, in effect, proposing to make the establishment of the plaintiff's title depend upon the failure or success of the defendant in proving the adoption. The High Court pointed out the error of this proceeding, and the Judicial Committee affirmed its judgment concurring also in its finding that the adoption had been proved. It was found also that the loss of the *anumati-patra* had been established; so that secondary evidence of it was receivable. KALI KISHORE DUTT GUPTA MOZUMDAR *v.* BHUSAN CHUNDER *alias* BEPIN CHUNDER DUTT GUPTA.

[I. L. R. 18 Calc. 201

[L. R. 17 I. A. 159

16.—*Presumption of ownership — Possession — Suit for ejectment—Evidence Act* (*I of* 1872), *s.* 110.] It is usually for the plaintiff who seeks ejectment to prove his title. But where he proves himself to have peaceably enjoyed possession for a considerable time, the person who has recently dispossessed him has to meet the presumption of law that the plaintiff's possession indicates his ownership. In a suit for possession of immoveable property and other reliefs, it was proved that the plaintiff and his predecessors in title had been in undisturbed possession for thirty or forty years previous to his dispossession by the defendant. The defendant alleged, but failed to prove, that the plaintiff had paid him rent as tenant-at-will of the premises. The lower Appellate Court, upon the finding that the plaintiff's possession was that of a licensee, modified the first Court's decree, which had allowed the claim in full:—*Held*, (by MAHMOOD J.) with reference to s. 110 of the Evidence Act, that although in the first instance the burden of proving his title was on the plaintiff, it was shifted by his proving long undisturbed possession; that the defendant's failure to prove the alleged payment of rent went far to prove that the plaintiff's possession was adverse; and that the Court below, in acting upon the theory that such possession was that of a licensee, had wrongly set up for the defendant a defence which he had not set up for himself. LACHHO *v.* HAR SAHAI.

[I. L. R. 12 All. 46

(8) PRINCIPAL AND AGENT.

17.—*Evidence as to liability of agent to account.*] In 1884 a deed of release exonerating an agent

ONUS PROBANDI—*continued.*

(8) PRINCIPAL AND AGENT—*concluded.*

from liability to account was executed by his principal, stating that there had been a settlement between them. In 1885 the agent signed an *ikrarnama* addressed to the principal, stating that there had not been a settlement of accounts, and that he was willing to account from the day of his appointment to date. Subsequently, having resigned his employment, the agent brought a suit to have the latter document set aside, but that suit was dismissed. In a suit brought by the principal, the release of 1884, and its contents, were proved to the satisfaction of both the Courts below, which dismissed the suit on that ground, although the *ikrarnama* of 1885 appeared to them, in fact, to have been made. Upon the plaintiff's appeal, it was contended that the *onus* was on the defendant to explain his execution of the *ikrarnama:—Held*, that, inasmuch as it had been found by two Courts concurrently that the release of 1884 was valid, and that it necessarily followed from that finding that the document of 1885 so far as it expressed the agent's willingness to account was false, the *onus* was as much upon the principal to explain his reception of the *ikrarnama* of 1885, as upon the agent to explain its execution. The question as to the burden of proof had therefore been rendered immaterial by the facts proved. On the materials before them the Courts below had rightly decided in favour of the defendant. NILMONI SINGH DEO *v.* KIRTI CHUNDER CHOWDHRY.

[I. L. R. 20 Calc. 847
[L. R. 20 I. A. 95

(9) RENT, SUITS FOR.

18.—*Suit by recorded co-sharer for profits—Claim for profits not collected in consequence of defendant's negligence or misconduct—Jamabandi—Act XII of* 1881 (*N-W. P. Rent Act*), *ss.* 93 (*h*) 209—*Act I of* 1872 (*Evidence Act*), *s.* 106.] In a suit under s. 93 (*h*) of the N.-W. P. Rent Act (XII of 1881), by a recorded co-sharer against a *lambardar* for his recorded share of the profits of a *mehal*, in which the plaintiff seeks to make the defendant liable under s. 209, not only for the profits which the latter has actually collected, but for those which through gross negligence or misconduct he has omitted to collect, the burden of proving such negligence or misconduct rests in the first instance on the plaintiff. No general rule can be laid down as to the *quantum* of evidence which the plaintiff in such a case must give in order to shift the burden of proof on to the defendant. The mere production by the plaintiff of the *jamabandi* or rent-roll is not sufficient to cast upon the defendant the necessity of proving that there was no negligence or misconduct in him. Section 106 of the Evidence Act (I of 1872) does not apply to such a case. So *held* by the Full Bench, MAHMOOD, J., dissenting:—*Held*, by MAHMOOD, J., *contra*, that the production of the *jamabandi* by the plaintiff, in a case where he claims his share of the profits according to the *jamabandi* and the *lambardar*-defendant pleads that the actual collections fell short of the *jamabandi*, established a *prima-facie* presumption in favour

ONUS PROBANDI—*concluded.*

(9) RENT, SUITS FOR—*concluded.*

of the plaintiff so as to throw upon the defendant, with reference to s. 106 of the Evidence Act, the necessity of proving circumstances which rendered it impossible for him to collect the profits according to the *jamabandi*. MUHAMMAD INAYAT HUSAIN *v.* MUHAMMAD KARAMAT-ULLAH.

[I. L. R. 12 All. 301

OPIUM ACT (I OF 1878).

———, s. 3.—*License to possess opium—Transport of opium.*] A person having a license for the possession of opium as a medical practitioner, limited to eight *pollums* of opium, sent his servant to buy from a licensed dealer at Sholavaram and bring to Madras four *pollums* of opium; he was convicted of the offence of transporting opium without a license:—*Held*, the conviction was right. QUEEN-EMPRESS *v.* RAMANUJAM.

[I. L. R. 13 Mad. 191

———, s. 9.

See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION.

[I. L. R. 15 All. 192

ORDER.

——— deciding title to money deposited in Court.

See RIGHT OF SUIT—ORDERS, SUITS TO SET ASIDE.

[I. L. R. 19 Calc. 286

——— for payment of money.

See STAMP ACT, 1879, S. 3, CL. 6.

[I. L. R. 17 Bom. 684

——— granting certificate of guardianship.

See MINOR—REPRESENTATION OF MINOR IN SUITS.

[I. L. R. 17 Calc. 347
[L. R. 16 I. A. 195

——— in attachment proceedings.

See LIMITATION ACT, 1877, ART. 11.

[I. L. R. 17 Calc. 260
[I. L. R. 13 Mad. 366
[I. L. R. 17 Bom. 629

——— of Her Majesty in Council.

See LIMITATION ACT, 1877, ART. 180.

[I. L. R. 20 Calc. 551

——— of Judge in chambers for costs.

See EXECUTION OF DECREE—MODE OF EXECUTION—COSTS.

[I. L. R. 17 Bom. 514

——— prohibiting collection of rents.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[I. L. R. 19 Calc. 127

ORDERS.

See CASES UNDER APPEAL—DECREES.

See CASES UNDER APPEAL—ORDERS.

See CASES UNDER APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS.

See CASES UNDER LETTERS PATENT, HIGH COURT, CL. 15.

See CASES UNDER LETTERS PATENT, HIGH COURT, N.-W. P., CL. 10.

See CASES UNDER SPECIAL APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

——— in execution of decree.

See CASES UNDER RES JUDICATA—ORDERS IN EXECUTION OF DECREE.

OUDE ESTATES ACT (I OF 1869).

1.—*Effect of sanad to confer proprietary right on a talukdar, not being a trustee—Claim to under-proprietary right against talukdar distinguished and not concluded by a decree for the former right in his favour.*] Unless a *talukdar*, who holds such a *sanad* as is referred to in the Oude Estates Act (I of 1869), has agreed in some way, or has otherwise become legally bound, to hold the estate comprised in the *sanad*, or some part of it, in trust for another person, the principle on which *Sookraj Koowar* v. *Government*, 14 Moore's I. A. 112, and *Hardeo Baksh* v. *Jowahir Singh*, L. R. 6 I. A. 161, were decided is not applicable to make the *talukdar* hold subject to a charge for the benefit of such other person. The *talukdar* in whom no such trust is vested is entitled to the proprietary right in the lands forming the *talukdari* estate comprised in the *sanad*. A claim against the *talukdar* for the proprietary right included lands in which the claimant alleged himself to have purchased under-proprietary rights which were not claimed. A decree, maintaining the *talukdar's* proprietary right was made without prejudice to a claim for the under-proprietary rights. HAIDAR ALI KHAN *v.* NAWAB ALI KHAN.

[I. L. R. 17 Calc. 311
[L. R. 16 I. A. 183

2.—*Talukdars—Title obtained by talukdar under his sanad—Effect of confiscation of* 1858 *upon previous gift—Attempt to establish trust for claimants as to part of talukdari estate—Claim to sub-proprietary right distinguished.*] The *sanad* granting a *talukdar's* estate confers *primâ facie* an absolute title upon the grantee. A gift of villages by a *talukdar* to collateral relations, if effectively made in 1850, and whether absolute or only for the maintenance of the donees out of the rents and profits, was rendered, by the effect of the confiscation of 1858, inoperative after that event to establish an interest as against the *talukdar* holding under a *sanad* comprising the villages. Where a claim was based upon the principle that the conduct of a *sanad*-holding *talukdar* and of his predecessor had been sufficient to establish against him a liability to make good, out of his *taluk*, interests, as to which ground was supposed to have been given for his relations to claim:—*Held*, that such a claim was not established merely by the claimants having been left in possession of villages, and having paid to the *talukdar* only the proportion of the revenue assessed upon them, during the whole time of the troubles in Oude, and afterwards. *Held*, also, that the question of the claimants having an under-proprietary right in such villages was entirely irrelevant to a claim for a declaration that they had proprietary right therein, on which latter title they sought to found a right to have their names entered in the settlement record; and *held*, that, although there are cases in which the claimant of a proprietary right may be allowed to maintain, on the same facts, that he is an under-proprietor, this claim was not one of them. RAM SINGH *v.* DEPUTY COMMISSIONER OF BARA BANKI.

[I. L. R. 17 Calc. 444
[L. R. 17 I. A. 54

———, s. 2 and ss. 13, 20, 22 (6).—*Will of talukdar—Registration of will—Succession to talukdari—Son of deceased elder brother preferred to younger brother.*] A written statement by a *talukdar* made in 1860 in reply to inquiries by the Government, issued in the districts under circular orders regarding the succession of *talukdars*, may come within the definition of a *talukdar's* will in s. 2 of the Oude Estates Act (I of 1869) The statement was described by the *talukdar* in a letter to the authorities, in 1877, as "the will which has been submitted to the Lucknow district, through the *tahsil* of Kursi, on 6th April 1860":—*Held*, that this showed that he intended the statement of 1862 to be his will, and that the statement, as was held with regard to a similar one in *Hurpurshad* v. *Sheo Dyal*, L. R. 3 I. A. 259, was a will within the definition in the above section. The *talukdar* declared in a subsequent will, of 19th August 1879, that no document purporting to be a will, the context whereof was repugnant to the will of the latter year, should be admitted as a will. But the instrument of 1860 was not repugnant to the will of 1879. Also the latter document was not registered in accordance with s. 20 of the Oude Estates, Act, 1869, and, being inoperative as to the *talukdari* estate, it could not revoke the will of 1860, which, also, was not rendered inoperative by any of the provisions of the Act. *Held*, that by the true construction of s. 22, sub-section 6, brothers take in the same manner as sons are directed to take by the preceding sub-sections; and that the descendants of a deceased elder brother are preferred as heirs to the younger surviving brother. HAIDAR ALI *v.* TASADDUK RASUL KHAN.

[I. L. R. 18 Calc. 1
[L. R. 17 I. A. 82

1.—s. 8, and s. 22.—*Descent of taluk.*] A *taluk*, entered in the lists 1 and 2, prepared in conformity with s. 8 of the Oude Estates Act,

OUDE ESTATES ACT (I OF 1869), s. 8—*—concluded.*

1869, descends, according to the rules pointed out in s. 22, as an impartible estate to the single heir determined by the Hindu law of inheritance. *Brij Indar Bahadur Singh* v. *Jankee Koer*, L. R. 5 I. A. 1, followed. RAN BIJAI BAHADUR SINGH *v.* JAGAT PAL SINGH. BISHESHAR BAKSH SINGH *v.* RAN BIJAI BAHADUR SINGH.

[I. L. R. 18 Calc. 111
[L. R. 17 I. A. 173

2.—s. 8 and s. 22.—*Taluk descending to a single heir — Ascertainment of that single heir distinguished from the rule of primogeniture — Family custom.*] An estate belonging to a *talukdar* whose name is entered in the second and not in the third of the lists of *talukdars* in the six specified classes prepared under the Oude Estates Act (I of 1869), ss. 8—10, is one which according to the custom of the family descends to a single heir but not necessarily by the rule of primogeniture. If, as happened in the present case, where the estate descended to a single heir, the heir according to lineal primogeniture is more remote in degree from the ancestor than other persons, who may be collaterals, coming within the line of heirship, then, according to the classification in the Oude Estates Act, nearness in degree prevails over directness of line. But if two collaterals, or other persons in the line of heirship, are equal in degree, then the person rightly entitled is indicated by the seniority of the line to which he belongs. Section 22, sub-section 11 of the Act, referring to the law which would govern descent in default of any heirs who would come under the special provisions of the Act, includes in that law family custom when established. In an attempt to prove a family custom to the effect that females should not inherit, no proof was afforded by the production of certain *wajib-ul-araiz*, as to which there was nothing to show that the villages of which they were recorded were the villages in suit, or belonging to the family which was disputing the succession. BHAI NARINDAR BAHADUR SINGH *v.* ACHAL RAM.

[I. L. R. 20 Calc. 649
[L. R. 20 I. A. 77

OUDE, LAW OF.

See MAHOMEDAN LAW—DOWER.

[I. L. R. 19 Calc. 689
[I. L. R. 21 Calc. 135

OUDE LAWS ACT (XVIII OF 1876).

——, s. 5.

See MAHOMEDAN LAW—DOWER.

[I. L. R. 19 Calc. 689
[I. L. R. 21 Calc. 135

——, ss. 9 to 13.

See PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS.

[I. L. R. 21 Calc. 496

OUDE LOANS OF 1838 AND 1842, PAYMENTS DUE UNDER.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PENSION.

[I. L. R. 18 Calc. 216

OUDE RENT ACT (XIV OF 1868).

——, s. 111.

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 19 Calc. 159

OUDE, ROYAL FAMILY, OF PENSION TO.

See TREATY, CONSTRUCTION OF.

[I. L. R. 17 Calc. 234
[L. R. 16 I. A. 175

OUTCAST, SUCCESSION TO.

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN.

[I. L. R. 13 All. 573

OUTCASTS.

See HINDU LAW—INHERITANCE—DANCING-GIRLS.

[I. L. R. 13 Mad. 133

OWNER OR OCCUPIER OF LAND.

See RIOTING.

[I. L. R. 12 All. 550

OWNERS OF ADJOINING ESTATES.

See DECREE—FORM OF DECREE—POSSESSION.

[I. L. R. 17 Calc. 814

OWNERSHIP, PRESUMPTION OF.

See ONUS PROBANDI—POSSESSION AND PROOF OF TITLE.

[I. L. R. 12 All. 46

1.—*Proof of zemindar's title to a tract of hill and forest — Construction of istemrar sanad of 1803 as to lands granted—Specification of villages —Effect of proved acts of possession by zemindar —Grant — Possession, evidence of — Questions of fact.*] Where the proprietary right in a tract of land had been constantly asserted, all questions between the disputants as to the amount of the use of the tract by the claimant, and as to the sufficiency of such use to establish his possession over the whole extent, were *held* to be questions of fact. A zemindar claimed from the Government the proprietary possession of a tract of hill and forest, in virtue of an *istemrar sanad* of the year 1803, conferring upon the grantee his heirs and successors a permanent property in the zemindari as then possessed. To the *sanad*, which was aptly worded to include the subject of this claim, the acts of the zemindar had been ascribed. But it did not contain any description of the lands which it was intended to carry, a marginal note only specifying three villages then comprising the zemindari:—*Held*, that the grant was not

OWNERSHIP, PRESUMPTION OF— *concluded.*

confined to the villages so named, and to an area in their immediate vicinity, but that the whole tract of hill and forest was claimable on its being shown, by direct evidence, or reasonable inference, that it was in the possession of the zemindar when he obtained a permanent title from the Government. As to part of the tract, the zemindar's acts of possession, such as grazing cattle, cutting timber, and collecting forest produce, had been exclusive of the exercise of such rights by any other persons; but as to another part of the tract, his acts of that character had been concurrent with a similar user of hill and forest by ryots of neighbouring villages, not part of the zemindari, and belonging to the Government. *Held*, as to both parts, that the acts of possession, which had been found by both the Courts below to have been done by the zemindar, did not fall short of proving his proprietary possession, and that the user by the villagers, not having taken place in the assertion of conflicting proprietary right, and whether or not they were sufficient to establish rights of easement, were neither in amount nor quality sufficient to displace the zemindar's proprietary title. The decision of the first Court that the exercise of the abovementioned rights by the zemindar was evidence only of the right on his part to use the land of another for the purposes indicated, had been rightly reversed by the High Court. SECRETARY OF STATE FOR INDIA *v.* NELLAKUTTI SIVA SUBRAMANIA TEVAR.

[I. L. R. 15 Mad. 101

[L. R. 18 I. A. 149

Affirming the decision of the High Court in—SIVASUBRAMANYA *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 9 Mad. 285

2.—*Property in trees—Tree planted by mutwali of a shrine on land belonging to the shrine—Enjoyment of the fruit by mutwali—Attachment of tree in execution of money-decree against mutwali.*] A tree having been planted by the predecessor of a *mutwali* of a shrine on land admittedly belonging to the shrine, and a judgment-creditor of the *mutwali* having sought to attach the tree under a money-decree against the *mutwali*:— *Held*, that although the judgment-debtor's predecessor planted the tree while acting as *mutwali*, he could acquire no property in the tree by so doing, nor could any benefit, which he or the present *mutwali* might have derived by taking the fruit of the tree, enable them to acquire any right of ownership in the tree as against the shrine. The land admittedly belonging to the shrine, the tree must have the same character until the contrary was proved. NURBIBI *v.* MAGANLAL PARBHUDAS.

[I. L. R. 16 Bom. 547

OWNERSHIP, RIGHT OF.

See LIMITATION ACT, 1877, s. 26.

[I. L. R. 16 Bom. 532

PANCHAYAT.

—*Madras Regulation XXXII of* 1802—*Madras Regulation XII of* 1816—*Cases in which a District Panchayat may be appointed—Finality of award—Notice of nomination of panchayatdars.*] The applicability of the procedure provided in Madras Regulation XII of 1816 is not limited to cases in which a breach of the peace has taken place or is apprehended. When a district *panchayat*, appointed under that Regulation, has come to a decision, that decision is final and conclusive between the parties and cannot be impeached or set aside, except in the manner prescribed by the Regulation. Such decision is not invalid, because only one party consented to the reference of the matter in dispute to a *panchayat*, or because the other party, who protested against the proceedings, had not notice of the time when the nomination of the *panchayatdars* was to take place. NARAYANA *v.* CHANDRA.

[I. L. R. 15 Mad. 1

PAPER BOOKS, DELIVERY OF.

See PRACTICE — CIVIL CASES—PAPER BOOKS.

[I. L. R. 17 Calc. 289

PAPER CURRENCY ACT (XX OF 1882).

——, s. 25.

See PROMISSORY NOTE.

[I. L. R. 16 Bom. 689

PARDANASHIN WOMEN.

1.—*Personal appearance in Court—Practice.*] Although there is no provision in the Criminal Procedure Code which protects *pardanashin* ladies from appearing in a Court of Justice, nevertheless it is very undesirable to compel the attendance of such persons. It cannot be admitted as a general principle that *pardanashin* ladies whose evidence is required in criminal trials are to be allowed to compel the Courts to examine them at some other place than the Court-house itself. *In the matter of the Petition of Din Tarini Debi*, I L. R. 15 Calc. 775, and *In re Farid-un-nissa*, I. L. R. 5 All. 92, referred to. Where a Magistrate considered it necessary to take the evidence of a *pardanashin* lady, who objected to appear in Court, the High Court directed him to make arrangements so as to take her evidence either in an empty Court-room in the presence of himself, the accused, and the pleader for the prosecution, or, if no empty Court-room were available, in his own private room or some other room in the Court building. IN THE MATTER OF THE PETITION OF BASANT BIBI.

[I. L. R. 12 All. 69

2.—*Attendance of pardanashin—Warrant case—Issue of summons—Criminal Procedure Code*, 1882, *ss.* 204, 205—*Discretion of Court.*] In a warrant case, the accused being a *pardanashin*, the Magistrate can dispense with her attendance under s. 205 of the Criminal Procedure Code if he issues a summons in the first instance, and this he has a discretion to do under s. 204. BASUMOTI ADHIKARINI *v.* BUDRAM KALITA.

[I. L. R. 21 Calc. 588

PARDANASHIN WOMEN—*concluded.*

3.—*Execution of deed by pardanashin—Conditions necessary to the valid execution of a document by pardanashin—Suit to set aside deed—Onus probandi.*] Where a deed executed by a *pardanashin* woman is sought to be set aside, it is for the party wishing to uphold the deed to show affirmatively that the transaction intended to be carried out by the deed was a reasonable one; that the executant was fully cognizant of the meaning and legal and practical effect thereof, and that she executed the same with her full and free consent, that is to say, that she had independent advice on the subject and was not otherwise, as *e.g.*, by reason of bodily or mental infirmity, or by reason of fraud or coercion practised upon her, incapable of giving a rational consent to the transaction. One *M*, a *pardanashin* lady of some 70 years of age, and more or less illiterate, executed on the 11th September 1888 a deed which purported to divest her immediately of all her property in favour of her son *H*, who was dumb and imbecile, her daughter *S* who was named in the deed as guardian of *H*, and that daughter's son *Y*. *Y* was betrothed to a daughter of one *F*, and one of *S's* daughters was married to one *S H*. Those two persons, *viz.*, *F* and *S H* were mainly instrumental in procuring the execution of the deed in question. The deed was drafted in very artificial language, and it was not shown that the executant ever understood its contents or effect. The executant was, moreover, at the time of execution in ill-health and great mental distress, owing to the death of her son, *H*, which had happened some months previously. The deed was also executed in the absence of the person who was at that time the executant's chief adviser and the manager of her property. Lastly, it appeared that, as soon as the executant came to know what the true nature of the deed was, and that proceedings had been initiated in the Revenue Department for mutation of names, she took immediate measures to show her dissent from the provisions of the deed and her disapproval of what had been done thereunder:—*Held*, that under the circumstances above set forth the deed in question could not be considered as having been executed under the conditions necessary in such cases and must be set aside. *Ashgar Ali* v. *Delroos Banoo Begam*, I. L. R. 3 Calc. 324; *Mahomed Baksh Khan* v. *Hosseini Bibi*, I. L. R. 15 Calc. 684; and *Behari Lal* v. *Habiba Bibi*, and *Kaniz Fatima* v. *Abbas Ali*, I. L. R. 8 All. 627, referred to. MARIAM BIBI *v.* SAKINA.

[I. L. R. 14 All. 8

PARDON.

See APPROVERS.

[I. L. R. 14 All. 502

[I. L. R. 15 Mad. 352

See SESSIONS JUDGE, JURISDICTION OF.

[I. L. R. 15 Mad. 352

—*Criminal Procedure Code, s.* 337—*Trial of person who having accepted a pardon has not fulfilled the conditions on which it was offered.*] Where a pardon has been tendered to any person

PARDON—*concluded.*

in connection with an offence, he should not be tried for any alleged breach of the conditions of his pardon, or for any offence connected with that for which he has received pardon, until the trial of the principal offence, and of any offence connected therewith, has been completed. QUEEN-EMPRESS *v.* SUDRA.

[I. L. R. 14 All. 336

PARSI.

See LETTERS OF ADMINISTRATION.

[I. L. R. 17 Bom. 689

PARSI MARRIAGE AND DIVORCE ACT (XV OF 1865).

——, ss. 3 and 30.

See HIGH COURT, JURISDICTION OF—HIGH COURT, BOMBAY—CIVIL.

[I. L. R. 16 Bom. 136

——, s. 28.

See MARRIAGE.

[I. L. R. 16 Bom. 639

PARSIS.

See HUSBAND AND WIFE.

[I. L. R. 16 Bom. 630

—*Husband and wife—Parsi Matrimonial Court—Act XV of* 1865—*Suit by wife for judicial separation—Alimony after decree dismissing wife's suit and pending appeal—Alimony pending petition for review of judgment—Practice in allotment of alimony—Discretion of Court.*] A wife sued her husband for judicial separation in the Parsi Matrimonial Court. Alimony was granted to her by an order dated 11th July 1891, which directed the defendant to pay alimony to her from the 15th April 1891, "until the final decree herein be passed." On the 18th July 1891 the suit was dismissed, and after that date the defendant ceased to pay alimony. The plaintiff obtained a rule for review of judgment, which was discharged on the 27th January 1892, and on the 18th March 1892 she filed an appeal against the decree dismissing the suit and against the order refusing a review. She now applied for an order directing the defendant to pay her all the arrears of alimony "*pendente lite*" from the date of filing the suit, or so much as had not been paid, and that he should pay her further alimony until the final disposal of the appeal:—*Held* (1) dismissing the application, that the words "final decree herein," contained in the order of the 11th July 1891, by which alimony was granted, meant the decree in the suit and not in the appeal; (2) that the Parsi Matrimonial Court, constituted under Act XV of 1865, had no power to award alimony "*pendente lite*" after decree and pending appeal; (3) an unsuccessful wife is not entitled to claim alimony after final decree and pending appeal, nor for the period during which she is seeking review of judgment. *Quære*—Whether the Court where a petition for review is pending before it has a discretion to allot or continue alimony "*pendente lite*." The words, "during the suit," in s. 33 of Act XV of

PARSIS—*concluded.*

1865 include the period up to the making of a final or absolute decree. *Ellis* v. *Ellis*, L. R. 8 P. D. 188, and *Dunn* v. *Dunn*, L. R. 13 P. D. 91, should guide the practice of the Parsi Matrimonial Court in allotment of alimony for the time following a decree *nisi*. HIRABAI *v.* DHUNJIBHOY BOMANJI.

[I. L. R. 17 Bom. 146

PARTIES. *Col.*

1. Parties to Suits 793
   (*a*) Benamidar 793
   (*b*) Collector 793
   (*c*) Government 793
   (*d*) Mortgages, Suits concerning 793
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   (*f*) Partition Suits for ... 796
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——, Substitution of—*concluded.*

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[I. L. R. 16 Mad. 319

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[I. L. R. 21 Calc. 404

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[I. L. R. 17 Calc. 693

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[I. L. R. 12 All. 200

(1) PARTIES TO SUITS.

(*a*) BENAMIDAR.

1.—*Plaintiff found to be a mere name lender without interest in suit—Redemption, suit for by puisne mortgagee—Joinder of mortgagor on second appeal.*] On second appeal against a decree dismissing a suit which had been brought by a puisne mortgagee to redeem a prior incumbrance, it was ordered that the mortgagor be brought on to the record. On its appearing that it had not been intended that the plaintiff should take any interest under the mortgage sued on :—*Held*, that the second appeal should be dismissed. CHINNAN *v.* RAMACHANDRA.

[I. L. R. 15 Mad. 54

(*b*) COLLECTOR.

2.—*Suit for mutation of names in register.*] The Collector of the district is a necessary party to a suit by a purchaser against his vendor to compel mutation of names in the register. VIRASAMI *v.* RAMA DOSS.

[I. L. R. 15 Mad. 350

(*c*) GOVERNMENT.

3.—*Suit for declaration of title against a Municipality.*] The plaintiff sued a Municipal Council, under the Madras District Municipalities Act, for a declaration of his title to a certain structure situated in the limits of the Municipality and of his right to put a roof over it The structure was found to belong to the plaintiff :—*Held*, that the Secretary of State was not a necessary party to the suit. KRISHNAYYA *v.* BELLARY MUNICIPAL COUNCIL.

[I. L. R. 15 Mad. 292

(*d*) MORTGAGES, SUITS CONCERNING.

4.—*Transfer of Property Act (IV of 1882), s. 85—Parties to a mortgage-suit—Objection in written statement as to non-joinder.*] In a suit by a mortgagee against two of his three mortgagors, the defendants objected in their written statement that the suit was bad for non-joinder of the third

PARTIES—*continued.*

(1) PARTIES TO SUITS—*continued.*

(*d*) MORTGAGES, SUITS CONCERNING—*continued.*

mortgagor, and also alleged that subsequent incumbrances on the mortgaged premises had been created with the concurrence of the plaintiff. It appeared that the third mortgagor, as a witness, renounced interest in the greater part of the mortgaged premises. On second appeal :—*Held*, that the third mortgagor and the subsequent incumbrancers should have been made parties as having an "interest" within the meaning of s. 85 of the Transfer of Property Act. SUBBAN *v.* ARUNACHALAM.

[I. L. R. 15 Mad. 487

5.—*Redemption, suit for—Co-heir having interest in the mortgaged property at the time of the suit.*] A co-heir of the plaintiff having an interest in the mortgage at the time of the redemption suit is a necessary party to the suit, but not otherwise. TRIMBAK JIVAJI DESHAMUKHA *v.* SAKHARAM GOPAL.

[I. L. R. 16 Bom. 599

6.—*Prior and puisne incumbrancers — Puisne incumbrancer not made a party to suit upon prior incumbrance—Right to redeem.*] To a suit on his mortgage by a prior incumbrancer, having notice of a puisne incumbrance, the puisne incumbrancer should be joined as a party. If he is not so joined the puisne incumbrancer's right to redeem will not thereby be affected by the decree in the suit. *Mohan Manor* v. *Togu Uka*, I. L. R. 10 Bom. 224; *Muhammad Sami-ud-din* v. *Man Singh*, I L. R. 9 All. 125; and *Gajadhar* v. *Mul Chand*, I. L. R. 10 All. 520, referred to. NAMDAR CHAUDHRI *v.* KARAM RAJI.

[I. L. R. 13 All. 315

7.—*Suit to bring mortgaged property to sale,—Puisne incumbrancer—Transfer of Property Act (IV of 1882), s. 85—Registration—Notice.*] *A* and *B* jointly mortgaged certain immoveable property to *X* by a simple mortgage-deed on the 10th September 1882. They again mortgaged the same property to *X* on the 23rd February 1884. On the 6th August 1885 *A* mortgaged a portion of the said property to *Y*. On the 12th August 1885 *B* mortgaged a portion of the same property to *X*. On the 21st August 1885 *A* mortgaged a portion of the same property to *Z*, and *Z's* mortgage was registered. On the 20th September 1885, *A* and *B* sold to *X* the property mortgaged to him, and with the proceeds of that sale *X's* three mortgages were paid off. On the 8th January 1887, *Y* sued *A*, *B*, and *X*, for cancelment of the deed of sale of the 20th September 1886, and for sale of the property mortgaged to him under his deed of the 6th August 1885. *Y* did not make *Z* a party to this suit. He did not ask for redemption of *X's* mortgages nor for foreclosure of *Z's* mortgage :—*Held*, that *Z's* mortgage of the 21st August 1885 having been registered, *Y* must be taken to have had notice of it, and, having had notice thereof, was bound to make *Z* a party to the suit for sale

PARTIES—*continued.*

(1) PARTIES TO SUITS—*continued.*

(*d*) MORTGAGES, SUITS CONCERNING—*concluded.*

under his (*Y's*) mortgage. *Damodar Dev Chand* v. *Naro Mahadev Kelkar*, I. L. R. 6 Bom. 11, and *Dullabhdas Dev Chand* v. *Lakshmandas Sarup Chand*, I. L. R. 10 Bom. 88, referred to. *Per* MAHMOOD J.:—The provisions of s. 85 of Act IV of 1882 are not absolutely imperative, and though thereunder a subsequent incumbrancer ought to be made a party to a suit by a prior mortgagee on his mortgage, the non-joinder of such subsequent incumbrancer is not a fatal defect in the suit. Registration of a subsequent mortgage is not necessarily any notice to a prior mortgagee of the existence of such subsequent mortgage; it being no part of a mortgagee's duty to be on the watch for incumbrances subsequent to his own. MATA DIN KASODHAN *v.* KAZIM HUSAIN.

[I. L. R. 13 All. 432

8.—*Suit by mortgagee and sale in execution of mortgage-decree—Grant of patni by mortgagor—Patnidar—Right of redemption—Notice—Constructive notice—Transfer of Property Act (IV of 1882), ss. 3 and 85.*] A *mouzah*, K. was mortgaged by *D* by bonds extending from 1867 to 1879, the last bond of 5th January 1879 including the amounts borrowed on the former bonds. On 7th January 1872, whilst it was so under mortgage, the same mortgagor *D* executed bonds whereby he mortgaged K to the defendants, and in suits brought on the basis of those bonds, came to an amicable settlement with the defendants by which on 25th February 1879 he settled K in *patni* with them; the *bonus* for the *patni* going to satisfy the mortgage-debts. In 1885 a suit, to which the present defendants were not made parties, was brought by the mortgagees of the bond of 5th January 1879, and in execution of the decree in that suit, K was put up for sale and purchased by the plaintiff on 21st June 1886. In a suit brought in 1890 against the defendants to set aside the *patni* and for *khas* possession of K, it was found that the plaintiff had notice of the *patni*:—*Held*, that the defendants as *patnidars* had an interest in K within the meaning of s. 85 of the Transfer of Property Act, and should therefore have been made parties to the suit in 1885, and thereby given an opportunity of redeeming the mortgage on which that suit was brought. *Kokil Singh* v. *Duli Chand*, 5 C. L. R. 243, and *Kasimunnissa Bibee* v. *Nilratna Bose*, I. L. R. 8 Calc 79, referred to. If not as *patnidars*, they were entitled as second mortgagees to have an opportunity of redeeming the prior mortgage and to be parties to that suit. Not having been parties, the plaintiff was not entitled to *khas* possession as against them. *Nanack Chand* v. *Teluchdye Koer*, I. L. R. 5 Calc. 265; 4 C. L. R. 358; *Dirgopal Lall* v. v. *Bolakee*, I. L. R. 5 Calc. 269; and *Radha Pershad Misser* v. *Monohar Dass*, I. L. R. 6 Calc. 317, referred to. JUGUL KISSORE LAL SING DEO *v.* KARTIC CHUNDER CHOTTOPADHYA.

[I. L. R. 21 Calc. 116

PARTIES—*continued.*

(1) PARTIES TO SUITS—*continued.*

(*e*) OFFICIAL ASSIGNEE.

9.—*Insolvent Act (11 and 12 Vict., c. 21)—Official Assignee made a party-defendant.*] In a suit in the mofussil the defendant having been adjudicated an insolvent under the Insolvent Act (11 and 12 Vict., c. 21), the Official Assignee was placed upon the record as a defendant, and judgment was entered against him for the sum claimed to be paid out of the insolvent's estate: —*Held*, that the Official Assignee was not a proper party, there being nothing in the Insolvent Act which enables a suit of this kind to be continued against the Official Assignee. MILLER *v.* BUDH SINGH DUDHURIA.

[I. L. R. 18 Calc. 43

10.—*Suit by heirs of insolvent for property acquired after insolvency.*] *R* became possessed of certain properties in 1872 and 1881. In 1866 he had presented a petition of insolvency and a vesting order was made. No final order of discharge was ever made, and *R* died in 1888. In a suit by the heirs of *R* for their share of the property acquired after his insolvency:—*Held*, that the Official Assignee was not a necessary party to the suit, though in case of a decree in the plaintiff's favour notice should be given him by the Court. FATMABIBI *v.* FATMABIBI.

[I. L. R. 16 Bom. 452

(*f*) PARTITION, SUITS FOR.

11.—*Suit for joint property without joining other owners or sharers—Defect of parties—Suit for declaratory decree.*] The plaintiffs based their claim to a goat sacrificed on the 4th day of each month on an alleged custom by which each of five families took certain goats in each month, and sued to establish their right without making the other families parties:—*Held*, that to make any declaration in a suit to which they were not parties would be in effect to partition joint property, and to define the share of each without all the shares being before the Court. *Prahlad Singh* v. *Luchmunbutty*, 12 W. R. 256. KALI KANTA SURMA *v.* GOURI PROSAD SURMA BARDEURI.

[I. L. R. 17 Calc. 906

12.—*Suit for partition and to set aside order disallowing objection to attachment—Purchaser or mortgagee of a co-parcener's share.*] In a partition suit all persons interested in the property to be divided must be brought before the Court. A purchaser or mortgagee of a co-parcener's share in the joint property is a proper, and even necessary, party to a suit for partition. *A*, *B*, and *C*, were members of a joint Hindu family. In execution of a decree against *B*, a portion of the family property was attached. Thereupon *A* intervened, and objected to the attachment so far as his own share was concerned. The objection was disallowed, and the property was brought to sale and purchased by *D*. *A* then filed a suit (1) to set aside the order in the miscellaneous proceedings disallowing his objection to the attachment; and (2) for a

PARTIES—*continued.*

(1) PARTIES TO SUITS—*continued.*

(*f*) PARTITION, SUITS FOR—*concluded.*

partition of the whole family property. In this suit he impleaded not only his co-sharers *B* and *C*, but also *D*, the auction-purchaser, and *E*, a mortgagee of *B's* share in the joint property. The Subordinate Judge, holding that the suit was bad for misjoinder of parties as well as of causes of action, returned the plaint for amendment by striking out the prayer for partition. On appeal, this order was confirmed by the District Judge. On *A's* application to the High Court, under s. 622 of the Code of Civil Procedure:—*Held*, that the suit was not bad either for misjoinder of parties or for misjoinder of causes of action. Treating the suit as one for partition, the auction-purchaser *D* and the mortgagee *E* were proper, and even necessary, parties. If *A* established his right to partition, he would be entitled to have the order in the miscellaneous proceedings set aside in the same suit. SADU BIN RAGHU *v.* RAM BIN GOVIND.

[I. L. R. 16 Bom. 603

13.—*Private partition—Patni of separate share—Subsequent partition under Bengal Act VIII of* 1876, *s.* 128.] The plaintiffs were co-sharers in a certain estate, *T* being another co-sharer. In 1818 a private partition took place between the co-sharers in the course of which certain specific lands were allotted to *T* in severalty, the rest remaining undivided. *T* granted a *patni* lease of her share to third parties who were thenceforth in possession; and subsequently there was a partition of the whole estate by the Collector under Bengal Act VIII of 1876, in the course of which the specific lands allotted to *T* in the private partition were allotted to the plaintiffs, who brought against the tenants of the land suits for rent to which they made the *patnidars* defendants:—*Held*, that the *patnidars* were properly made parties to the suits in order to try the question of the right to receive the rent as between the plaintiffs and the *patnidars*. *Kashee Ram Dass* v. *Sham Mohinee*, 23 W. R. 227; *Ahamudeen* v. *Girish Chunder Shamunt*, I. L. R. 4 Calc. 350; and *Madan Mohan Lal* v. *Holloway*, I. L. R. 12 Calc. 555, referred to. HRIDOY NATH SHAHA *v.* MOHOBUTNESSA BIBEE.

[I. L. R. 20 Calc. 285

(*g*) PARTNERSHIP, SUITS CONCERNING.

14.—*Joinder of parties—Partnership debt—Representatives of a deceased partner—Mitakshara family—Contract Act* (*IX of* 1872), *s.* 45—*Succession Certificate Act* (*VII of* 1889).] In a suit by surviving partners for the recovery of a partnership debt which became due during the life of a deceased partner, the representatives of such deceased partner, having regard to s. 45 of the Contract Act (IX of 1872), are necessary parties; and the provisions of s. 4 of the Succession Certificate Act (VII of 1889) must be complied with in order that the suit may be properly constituted, *Quære*, whether in the case of a family partnership under the Mitakshara law a question might arise as to the applicability of s. 45 of the Contract Act and s. 4 of the Succession Certificate Act (VII of 1889). *Gobind Prosad* v. *Chandar Sekhar*, I. L. R. 9 All. 486, dissented from. RAM NARAIN NURSING DOSS *v.* RAM CHUNDER JANKEE LOLL.

[I. L. R. 18 Calc. 86

PARTIES—*continued.*

(1) PARTIES TO SUITS—*concluded.*

(*g*) PARTNERSHIP, SUITS CONCERNING—*concld.*

15.—*Suit by firm after death of a partner for a debt accrued due during his life—Representatives of deceased partner—Contract Act, s.* 45.] The representatives of a deceased partner are not necessary parties to a suit for the recovery of a debt which accrued due to the partnership in the lifetime of the deceased partner. MOTILAL BECHARDAS *v.* GHELABHAI HARIRAM. BHANA LALLA *v.* DADABHOY SAGUNBAKSH.

[I. L. R. 17 Bom. 6

(2) SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

16.—*Civil Procedure Code, s.* 30—*Representation of numerous plaintiffs—Advertisement—Community of interest—Decree for management of a Hindu temple—Application for execution by person interested.*] In a suit by certain Tengalai Brahmans for declarations as to the mode of electing *dharmakartas* of a certain pagoda, &c., an order was made for a proclamation inviting "all persons interested to come in and be made parties, or see that others by whom they are content to be represented are made parties," and a decree was passed comprising a scheme to be carried out for such election, &c. A person not on the record and not a member of the Tengalai community, but claiming certain rights under the decree now applied to compel the observance of the scheme:—*Held*, that the above order did not invest the suit with a representative character, and the applicant had no right to apply. RAGAVA *v.* RAJARATNAM.

[I. L. R. 14 Mad. 57

17.—*Civil Procedure Code*, 1882, *s.* 30—*Joint suit by persons who have a common cause of action—Declaratory decree—Denial of right—Perpetual injunction—Specific Relief Act* (*I of* 1877), *ss.* 42 *and* 54.] The plaintiffs were the hereditary *gors* or priests, residing at Dakor, who ordinarily conducted their *yajmans* or patrons to the temple of Shri Ranchhod Raiji, performed worship there on their behalf, and received remuneration for their services. The defendants were the *shevaks* or ministers of the idol; it was their duty to remain in constant attendance on the idol, perform the daily services at the temple, collect the offerings, and apply the same to the purposes of the foundation. On 12th October 1883 the *shevaks* issued rules prohibiting people from entering the Nij Mandir and Saja Mandir, which were particularly sacred chambers in the temple, except on payment of certain fees. Every visitor was required to purchase a ticket of admission to the interior parts of the temple. The plaintiffs thereupon sued for a declaration of their right of free access to the Nij Mandir and Saja Mandir at all times

PARTIES—*continued.*

(2) SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*continued.*

and on all occasions when the temple was open for purposes of public worship. They alleged that the new rules framed by the *shevaks* constituted an infringement of their immemorial rights of going into the said *mandirs* without any let or hindrance, of worshipping the idol there for themselves and their patrons, and of receiving whatever their patrons gave them. They, therefore, sought for a perpetual injunction restraining the *shevaks* from interfering with their rights. The plaintiffs were 208 in number. Thirteen of them obtained leave to bring the suit on behalf of themselves and the rest under s. 30 of the Code of Civil Procedure (Act XIV of 1882). The defendants contended (*inter alia*) that the plaintiffs had each a separate cause of action; that they had no right to sue jointly; that they were not entitled to a declaratory decree under s. 42 of the Specific Relief Act; and that the plaintiffs never having been obstructed in the exercise of their rights, had no cause of action:—*Held*, that the suit was rightly constituted under s. 30 of the Code of Civil Procedure. The rules made by the *shevaks* in 1883 interfered with the immemorial rights of the *gors*, and gave a common cause of action to all the plaintiffs. They were, therefore, entitled to sue jointly. *Held*, also, that the plaintiffs were entitled to a declaratory decree under s. 42 of the Specific Relief Act (I of 1877), as their title to free access with their patrons to the sacred shrines and to receive presents from their patrons unfettered by the rules of 1883 was denied by those rules. *Held*, also that the plaintiffs were entitled to further relief by way of perpetual injunction under s. 54 of 1877, as the defendants had threatened to invade their enjoyment of property, and the invasion was such that pecuniary compensation would not afford adequate relief. *Held*, also, that the *shevaks* had no authority to issue the rules of the 12th October 1883, or to levy fees from worshippers in respect of any public religious services held in the temple. KALIDAS JIVRAM *v.* GOR PARJARAM HIRJI.

[I. L. R. 15 Bom. 309

18.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 30—*Suit to remove a mohunt*—"*Numerous parties.*"] The "numerous parties" mentioned in s. 30 of the Code of Civil Procedure mean parties capable of being ascertained. Two plaintiffs instituted a suit, on behalf of themselves and 42 other persons named in a schedule to the plaint, against a *mohunt* of an *akhra* to have certain alienations of property belonging to the idol set aside, and the *mohunt* removed on the ground that he was wasting the idol's property and setting up an adverse title to it, and to have another *mohunt* and trustee of the property appointed in his place. The plaintiffs alleged that they and the 42 others named in the schedule were in the habit of worshipping the idol or of contributing to the worship and expenses of it, but it was clearly established by the evidence that any Hindu who chose was at liberty to give *puja* or render service and worship,

PARTIES—*continued.*

(2) SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS—*concluded.*

and that others than the plaintiffs and the 42 persons named in fact did so, and that the plaintiffs and the persons named were, therefore, not the only persons interested in the suit. The plaintiffs applied for and obtained leave to institute the suit under the provisions of s. 30 of the Code. A decree having been made in their favour, on appeal:—*Held*, that the suit was not one to which the provisions of s. 30 were applicable, as the persons interested therein, not being the whole Hindu community, were incapable of ascertainment. SAJEDUR RAJA *v.* BAIDYANATH DEB.

[I. L. R. 20 Calc. 397

19.—*Leave must be granted before suit.*] In cases where leave under s. 30 of the Civil Procedure Code is necessary such leave must be obtained before the suit is brought and cannot be given subsequently. HARADHONE DASS *v.* RAMDOYAL RAI.

[I. L. R. 21 Calc. 181 note

NITYANUND GHOSE *v.* MOHENDRO KRISTO GHOSE.

[I. L. R. 21 Calc. 181 note.

20.—*Suit by numerous plaintiffs—Civil Procedure Code*, 1882, *s.* 30—*Leave to institute suit—Right of suit.*] Section 30 of the Civil Procedure Code does not require an "express" permission to be recorded by the Court, but if such permission can be well gathered from the proceedings of the Court in which the suit was instituted, an Appellate Court may (where an objection that no permission was given is taken on appeal) infer from such proceedings that permission was really granted. The *dictum* of STUART, C.J., in *Hira Lal* v. *Bhairon*, I. L. R. 5 All. 602, dissented from. DHUNPUT SINGH *v.* PARESH NATH SINGH.

[I. L. R. 21 Calc. 180

21.—*Suit to remove trustee of Mahomedan endowment—Civil Procedure Code, s.* 30.] The right of worship of each worshipper in a Mahomedan mosque or religious endowment is an independent right wholly irrespective of the right of the other worshippers, and therefore non-compliance by a worshipper with the provisions of s. 30 of the Code of Civil Procedure does not affect a suit for the removal of a trustee of a Mahomedan endowment. *Jan Ali* v. *Ram Nath Mundul*, I. L. R. 8 Calc. 32; *Jawahra* v. *Akbar Hussain*, I. L. R. 7 All. 178; *Lutifunnisa Bibi* v. *Nazirun Bibi*, I. L. R. 11 Calc. 33, and *Zafaryab Ali* v. *Bakhtawar Singh*, I. L. R. 5 All. 497, referred to. MOHIUDDIN *v.* SAYIDUDDIN *alias* NAWAB MEAN.

[I. L. R. 20 Calc. 810

(3) ADDING PARTIES TO SUITS.

(*a*) PLAINTIFFS.

22.—*Non-joinder of plaintiff—Malabar Law—Endowment—Suit by one of two co-uralans.*] In a suit by one of two *co-uralans* of a Malabar *devasom*

PARTIES—*continued.*

(3) ADDING PARTIES TO SUITS—*continued.*

(*a*) PLAINTIFFS—*continued.*

to recover land, the property of the *devasom*, the other *uralan* being joined as defendant, there was no evidence that the latter had repudiated the right of the plaintiff to sue in conjunction with himself, and it appeared that he had not been consulted as to the institution of the suit:—*Held*, that the suit was bad for non-joinder of the *co-uralan* as plaintiff. PARAMESWARAN *v.* SHANGABAN.

[I. L. R. 14 Mad. 489

23—*Civil Procedure Code, s.* 32—*Suit by surviving partner for debts due to firm—Limitation Act*, 1877, *s.* 22.] Except possibly in the case of an assignment by the other surviving partner or partners, it is not competent to one only of two or more surviving partners to sue for a debt due to the firm. *Dular Chand* v. *Balram Das*, I. L. R. 1 All. 453, and *Gobind Prasad* v. *Chandar Sekhar*, I. L. R. 9 All. 486, referred to. A Court may, under s. 32 of the Code of Civil Procedure, add a party necessary to a suit, although it may be obliged by the Indian Limitation Act, 1877, to dismiss the suit after such party has been added. *Ramsebuk* v. *Ram Lall Koondoo*, I. L. R. 6 Calc. 815, and *Kalidas Keval Dass* v. *Nathu Bhagwan*, I. L. R. 7 Bom. 217, referred to. *Oriental Bank Corporation* v. *Charriol*, I. L. R. 12 Calc. 642, discussed. IMAM-UD-DIN *v.* LILADHAR.

[I. L. R. 14 All. 524

24.—*Non-joinder of parties — Application to join necessary parties refused by Court of First Instance—Application granted by Court of Appeal—Order to add parties operating nunc pro tunc—Delay the act of the Court—Limitation.*] The plaintiffs, as sharers in certain rent alleged to be due by the defendants, sued to recover their share. The defendants contended that all the co-sharers were necessary parties. At the hearing on the 24th January 1889, the plaintiffs' co-sharers applied to be made co-plaintiffs and to be allowed to adopt what the plaintiffs had done in the suit. The application was rejected, and the suit was dismissed for want of parties. On appeal, the District Court in July 1890, holding that the lower Court ought to have joined the co-sharers, passed an order making them co-plaintiffs, and then confirmed the lower Court's decree on the ground that at the time (3rd July 1890) the co-sharers were made plaintiffs, the suit was barred by limitation. On appeal to the High Court:—*Held*, remanding the case, that the order of the lower appeal Court of the 3rd July 1890, allowing the co-sharers' application, which had been made on the 24th January 1889, but had been refused by the Court of First Instance, should be treated as operating *nunc pro tunc*, and that the co-sharers should be regarded as having been made parties to the suit when their application was made. The delay was attributable to the act of the Court, and the plaintiffs should not suffer from it. RAMKRISHNA MORESHWAR *v.* RAMABAI.

[I. L. R. 17 Bom. 29

PARTIES—*continued.*

(3) ADDING PARTIES TO SUITS—*continued.*

(*a*) PLAINTIFFS—*concluded.*

25.—*Non-joinder of parties—Suit in name of a firm by its manager—Addition of name of other partner as co-plaintiff—Misdescription of plaintiff—Civil Procedure Code (Act XIV of* 1882). *s.* 27—*Limitation Act (XV of* 1877), *s.* 22.] This suit was brought to recover a debt due to the firm of *K S*. The plaintiff was described as "the firm of *K S* by its manager *S*." The defendants objected that one *M* was a partner in the firm and should be a party to the suit; he was joined as a co-plaintiff on the 27th January 1888. The defendants then contended that the suit was time-barred under s 22 of the Limitation Act (XV of 1877):—*Held*, that the case was one of misdescription and not of non-joinder, for the action was brought in the name of the firm by its manager. The order of the words in the vernacular plaint showed that *S*, the manager, did not sue in his own name. The defendants were entitled to have the name of the other partner disclosed, but it being found as a fact that *S* was entitled to sue for the firm, the addition of *M's* name on the record came within the provisions of s. 27 of the Civil Procedure Code. KASTURCHAND BAHIRAVDAS *v.* SAGARMAL SHRIRAM.

[I. L. R. 17 Bom. 413

(*b*) DEFENDANTS.

26.—*Civil Procedure Code*, 1882, *s.* 32—*Joinder of new defendant against whom the plaint prays no relief.*] Suit upon a bond of which the obligor was therein described as the manager of a certain *muth*. The defendants, who were the sons of the obligor (since deceased), pleaded that the debt was contracted by their father for the benefit of the *muth* and as manager of the *muth*. The Judge ordered that the representative of the *muth* be joined as defendant in the suit under s. 32 of the Code of Civil Procedure, and subsequently a decree was passed against him:—*Held*, that the order under s. 32 was right, although the plaint had prayed for no relief against the *muth*. THIRTHASAMI *v.* GOPALA.

[I. L. R. 13 Mad. 32

27.—*Civil Procedure Code*, 1882, *s.* 437—*Non-joinder of parties—Persons having interest in suit.*] The holder of an impartible zemindari, governed by the law of primogeniture, having a son, executed a mining lease of part of the zemindari for a period of twenty years, by which no benefit was to accrue to the grantor unless mining operations were carried on with success, and the commencement of mining operations was left optional with the lessee. On the death of the grantor, his minor son and successor, by the Collector of the district as his next friend (authorized in that behalf by the Court of Wards), now sued the assignee of the lessee to have the lease set aside. The defendant had executed a declaration of trust in respect of his interest in favour of certain persons who were not joined:—*Held*, *per* MUTTUSAMI AYYAR and WILKINSON, JJ. (affirming the

PARTIES—*continued.*

(3) ADDING PARTIES TO SUITS—*continued.*

(*b*) DEFENDANTS—*concluded.*

judgment of PARKER, J.), that the defendant's interests not having been shown to be hostile to those of the persons entitled under the declaration of trust, the suit was not bad for non-joinder. BERESFORD *v.* RAMASUBBA.

[I. L. R. 13 Mad. 197

(*c*) RESPONDENTS.

28.—*Civil Procedure Code, s.* 559—*Joinder of respondents on appeal.*] In 1877 the plaintiff executed a deed of hypothecation to one of two partners to secure a loan obtained from them jointly In 1881 the plaintiff sold, *inter alia*, the hypothecated property to defendants 2 to 4, and it was arranged that the secured debt should be paid off by the vendees They failed to do this, but in 1882 they executed a mortgage for the amount due in favour of the other of the two partners, and he thereupon gave a written discharge to the plaintiff, who was found to have been acting in collusion with him to the disadvantage of his partner, the holder of the hypothecation-bond. The latter brought a suit in 1885 upon the hypothecation-bond and obtained a personal decree against the present plaintiff who did not appear and defend this suit, the amount of the decree being declared to be charged on the land in the possession of defendants 2 to 4. Meanwhile, defendant 1, who was the assignee of the mortgage of 1882, had obtained a decree upon it against defendant 4 This decree not having been executed, he subsequently sued upon the mortgage again and obtained a decree against defendants 2 to 4. The plaintiff now sued to have the last-mentioned decree set aside and recover the balance of the purchase-money from defendants 2 to 4. The Court of First Instance passed a decree for the amount claimed and declared it to be charged on the land. Defendant 1 preferred an appeal in which defendants 2 to 4 were joined by the Court of First Appeal which dismissed the suit:—*Held*, that defendants 2 to 4 were rightly joined as respondents by the Court under the Civil Procedure Code, s. 559. KANAGAPPA *v.* SOKKALINGA.

[I. L. R. 15 Mad. 362

29.—*Civil Procedure Code, s.* 559—*Power of Appellate Court to add respondent—Limitation Act (XV of* 1877), *s.* 22.] The power of an Appellate Court to make a person a respondent, under s. 559 of the Civil Procedure Code, is not affected by the Limitation Act (XV of 1877). In exercising its powers under s 559 of the Civil Procedure Code, an Appellate Court is competent to make a person a respondent who, in the original suit, was arrayed on the same side with the appellant. SOHNA *v.* KHALAK SINGH.

[I. L. R. 13 All. 78

30.—*Civil Procedure Code, s.* 559—*Power of Court to add respondent—Limitation Act (XV of* 1877), *s.* 22.] *Held* by the Full Bench that it is competent to a Court sitting under s. 559 of the

PARTIES—*continued.*

(3) ADDING PARTIES TO SUITS—*concluded.*

(*c*) RESPONDENTS—*concluded.*

Code of Civil Procedure to add a person as respondent in an appeal, though the time within which an appeal might have been preferred as against such person has expired. BINDESHRI NAIK *v.* GANGA SARAN SAHU.

[I. L. R. 14 All. 154

(4) SUBSTITUTION OF PARTIES.

(*a*) PLAINTIFFS.

31.—*Civil Procedure Code*, 1882, *ss.* 365, 367—*Procedure when rival parties claim to be the representatives of deceased plaintiff—Rival claimants—Appeal—Appeal by one plaintiff against another.*] Pending a suit for redemption, one of the plaintiffs died. Thereupon *A*, claiming as the adopted son, and *B*, as the daughter of the deceased, made separate applications under s. 365 of the Code of Civil Procedure (Act XIV of 1882), to be placed on the record. The Subordinate Judge ordered both claimants to be entered on the record as legal representatives of the deceased plaintiff, and proceeded with the suit. At the hearing he found that *A's* adoption was proved, and that *B* was not the legal heir of the deceased. He, therefore, passed a decree for redemption in *A's* favour. Against this decree *B* appealed, making *A* alone the respondent in the appeal. The Appellate Court held that *B*, and not *A*, was the heir of the deceased. It therefore passed a decree in *B's* favour and against *A*. On second appeal to the High Court:—*Held*, that the Subordinate Judge could not, under s. 367 of the Code of Civil Procedure admit on the record both the rival claimants as legal representatives of the deceased plaintiff, or adjudicate by his decree between their rival claims. *Held*, also, that the Appellate Court ought not to have allowed one plaintiff to appeal against the other, or to have decided the rights of different plaintiffs *inter se*. VITHU *v.* BHIMA.

[I. L. R. 15 Bom. 145

(*b*) DEFENDANTS.

32.—*Civil Procedure Code, ss.* 234, 368—*Sale in execution of decree—Death of judgment-debtor after attachment and before sale—Representatives, not joined.*] A decree-holder attached land of the judgment-debtor in execution of his decree and a sale-proclamation was made; the judgment-debtor died, and his legal representatives were not brought on to the record, but the execution proceeded to sale:—*Held*, that the representatives should have been substituted as parties on the record, and this not having been done the sale should be set aside. *Ramasami Ayyangar* v. *Bagirathi Ammal*, I. L. R. 6 Mad. 180, followed. KRISHNAYYA *v.* UNNISSA BEGAM.

[I. L. R. 15 Mad. 399

(*c*) RESPONDENTS.

33.—*Death of Hindu wife while respondent in appeal—Legal representatives.*] A Hindu wife obtained a decree against her husband for maintenance. He appealed, and while the appeal was

PARTIES—*concluded.*

(4) SUBSTITUTION OF PARTIES—*concluded.*

(*c*) RESPONDENTS—*concluded.*

pending the wife died, leaving two daughters. The question then arose whether her husband or his daughters should represent the deceased in the appeal:—*Held*, that the daughters of the deceased were the legal representatives for the purposes of the appeal. MANILAL REWADAT *v.* BAI REWA.

[I. L. R. 17 Bom. 758

PARTITION.

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1.	Right to Partition	806
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See HINDU LAW — JOINT FAMILY — POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS.

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See CASES UNDER HINDU LAW—PARTITION.

See HINDU LAW—WILL—POWER OF DISPOSITION.

[I. L. R. 17 Calc. 886

See MALABAR LAW—JOINT FAMILY.

[I. L. R. 14 Mad. 38

See PRACTICE—CIVIL CASES—COSTS.

[I. L. R. 18 Calc. 199

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[I. L. R. 14 All. 500

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[I. L. R. 16 Bom. 408

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See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY.

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[I. L. R. 16 Mad. 127

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PARTITION—*continued.*

——, Deed of—*concluded.*

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[I. L. R. 15 Bom. 677
[I. L. R. 15 Mad. 164

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See LIMITATION ACT, 1877, ARTS. 95, 96.

[I. L. R. 14 All. 498

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See APPEAL—DECREES.

[I. L. R. 19 Calc. 463

——, Suit for—

See COSTS—SPECIAL CASES—PRELIMINARY ISSUE.

[I. L. R. 20 Calc. 762

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[I. L. R. 14 Bom. 70
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[I. L. R. 16 Bom. 608

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[I. L. R. 20 Calc. 385

See RES JUDICATA — ESTOPPEL BY JUDGMENT.

[I. L. R. 13 Mad. 313

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[I. L. R. 15 Mad. 69

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[I. L. R. 12 All. 506
[I. L. R. 13 Mad. 25
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[I. L. R. 13 All. 309

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[I. L. R. 13 All. 309

(1) RIGHT TO PARTITION.

Co-parceners—Joint possession—Suit by subordinate tenure-holder for partition against superior landlord.] Joint possession alone is not a sufficient ground for compelling a partition. In order that persons may be co-parceners, and so have a right to partition, not only must they be in joint possession, but that joint possession must be founded on the same title. A subordinate tenure-holder therefore has no right of partition as

PARTITION—*continued.*

(1) RIGHT TO PARTITION—*concluded.*

against his superior landlord. *Ridai Nath Sandyal* v. *Iswar Chandra Saha*, 4 B. L. R. App. 57 note, and *Parbati Churn Deb* v. *Ain-ud-deen*, I. L. R. 7 Calc 577; 9 C. L. R. 170, referred to. The plaintiffs were proprietors of a 12-anna share and *dur-talukdars* of the other 4-anna share of *taluk A*, which consisted of a 7½-anna share of so much of the lands of three villages *D*, *B*, and *T* as appertained to an estate in the Collectorate No. 23. Estate No. 23 with three other estates represented fractional shares in three parganas comprising about 500 villages. No partition had been made of these parganas, but by private arrangement certain lands in the village had been assigned to one estate, and certain other lands to another, some lands being kept joint and common to all four estates. In estate No. 23 there was another permanent tenure *S*, a *taluk* consisting of lands not only in the three villages *D*, *B*, and *T*, but in nine others: of this *taluk* a 2-anna share belonged to *L*, one of the zemindars of estate No. 23, and a 7½-anna share of the remaining 14-anna share was held under the plaintiff. In a suit against *L* for partition of such of the lands of *taluk A* as appertained to estate No. 23, and were separate from the other estates, to which the other zemindars of estate No. 23 were made parties:—*Held*, assuming the plaintiffs were entitled to partition at all, that the suit would lie as regards the lands specified as belonging to estate No. 23 without reference to the lands held in common as belonging to all the four estates. *Hari Das Sanyal* v. *Pran Nath Sanyal*, I. L. R. 12 Calc. 566, and *Padmanani Dasi* v. *Jagadamba Dasi*, 6 B. L. R. 134, referred to. MAKUNDA LAL PAL CHOWDHRY *v.* LEHURAUX.

[I. L. R. 20 Calc. 379

(2) PRIVATE PARTITION.

2.—*Family arrangement among co-sharers—Partition among shareholders in zemindari villages—Construction of agreement—Custom.*] On a dispute among proprietors of shares in zemindari villages as to the respective amounts of the holdings till then undivided, to which they were entitled, a compromise made by their common ancestor's five sons, of whom the plaintiff's father was the eldest, had been filed in proceedings prior to this suit. This was construed to have assigned to the plaintiff's father an additional share, according to a custom recorded in the *khewat* at settlement, in virtue of which the eldest brother was entitled to a share greater than that allotted to the others,—a right termed "*hakh jetharnsi.*" MANICK CHAND *v.* HIRA LAL.

[I. L. R. 20 Calc. 45

3.—*Private partition—Patni of separate share—Subsequent partition under Bengal Act VIII of 1876, s. 128.*] The plaintiffs were co-sharers in a certain estate, *T* being another co-sharer. In 1818 a private partition took place between the co-sharers in the course of which certain specific lands were allotted to *T* in severalty, the rest remaining undivided. *T* granted a *patni* lease of

PARTITION—*continued.*

(2) PRIVATE PARTITION—*concluded.*

her share to third parties who were thenceforth in possession; and subsequently there was a partition of the whole estate by the Collector under Bengal Act VIII of 1876, in the course of which the specific lands allotted to *T* in the private partition were allotted to the plaintiffs, who brought against the tenants of the land suits for rent to which they made the *patnidars* defendants:—*Held*, that the *patnidars* were properly made parties to the suits in order to try the question of the right to receive the rent as between the plaintiffs and the *patnidars*: *Kashee Ram Dass* v. *Sham Mohinee*, 23 W. R. 227; *Ahamudeen* v. *Girish Chunder Shamunt*, I. L. R. 4 Calc. 350; and *Madan Mohan Lal* v. *Holloway*, I. L. R. 12 Calc. 555, referred to. *Held* also, that, assuming that the *patnidars* were not parties to the partition-proceedings by the Collector, they were entitled to retain possession of the lands allotted to their lessor *T* in the private partition, by which partition the plaintiffs were bound, notwithstanding the subsequent partition by the Collector: *Ahmedoolah* v. *Ashruff Hossein*, 13 W. R. 447; *Obhoy Churn Sircar* v. *Huri Nath Roy*, I. L. R. 8 Calc. 72; and *Juggessur Doyal Singh* v. *Bissessur Pershad*, 12 C. L. R. 281, approved. *Byjnath Lal* v. *Ramoodeen Chowdhry*, L. R. 1 I. A. 106, distinguished. Section 128 of Bengal Act VIII of 1876 does not apply to a case in which there has been a prior private partition; the estate in such a case not being "held in common tenancy" within the meaning of that section. HRIDOY NATH SHAHA *v.* MOHOBUTNESSA BIBEE.

[I. L. R. 20 Calc. 285

(3) JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

4.—*Civil Procedure Code (Act XIV of 1882), s. 265—Partition effected by Collector in execution of a decree.*] When the Collector makes a partition under s. 265 of the Code of Civil Procedure, the Civil Court has no power to examine his work or to direct him to make a fresh partition. *Dev Gopal Savant* v. *Vasudev Vithal Savant*, I. L. R. 12 Bom. 371, followed. SHRINIVAS HANMANT *v.* GURUNATH SHRINIVAS.

[I. L. R. 15 Bom. 527

5.—*Sheri lands—Lease by Government for a certain number of years—Civil Procedure Code (Act XIV of 1882), s. 265.*] Under s. 265 of the Civil Procedure Code a Civil Court cannot effect partition of lands paying revenue to Government. The Collector alone is empowered under that section to do so. DATTATRAYA VITHAL *v.* MAHADAJI PARASHRAM.

[I. L. R. 16 Bom. 528

6.—*Claim for partition of share of property—Decree for partition of defendants' share inter se—Subordinate Judge, jurisdiction of.*] In a suit instituted in the Court of a Munsif by a member of a Mahomedan family to have her share of the family property partitioned, the value of the plaintiff's share was found to be less than Rs. 1,000

PARTITION—*concluded.*

(3) JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION—*concluded.*

and the value of the whole family property exceeded Rs. 1,000. The lower Appellate Court decreed partition not only of the plaintiff's share, but also of the shares of the defendants *inter se*, though such partition was not asked for:—*Held*, that the lower Appellate Court had no jurisdiction to partition as amongst the defendants the residue of the property left after the partitioning off of the plaintiff's share. HIKMAT ALI *v.* WALI-UN NISSA.

[I. L. R. 12 All. 506

(4) MODE OF EFFECTING PARTITION.

7.—*Mortgage by one owner of undivided share of estate—Rights of mortgagee on partition where the undivided share is allotted to a sharer other than the mortgagor.*] Where *A* mortgaged to the plaintiff his undivided share in certain land which he held jointly with *B*, and subsequently to the mortgage, by a decree in a partition-suit to which the plaintiff was not a party, the mortgaged property was allotted to *B*, other property in substitution being allotted to *A*:—*Held*, in a suit against *B* and the representatives of *A*, to recover the sum due on the mortgage by sale of the mortgaged property, that the plaintiff could not proceed against the mortgaged property which had been allotted on partition to *B*, but should be allowed to proceed against that which had been allotted in substitution to *A*, his mortgagor. *Byjnath Lall* v. *Ramoodeen Chowdhry*, L. R. 1 I. A. 106: 21 W. R. 233, followed in principle. HEM CHUNDER GHOSE *v.* THAKO MONI DEBI.

[I. L. R. 20 Calc. 533

PARTNER, SUIT BY.

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS.

[I. L. R. 14 All. 524

PARTNERS.

——, Change of—

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[I. L. R. 19 Calc. 223

—— in trade.

See INSOLVENT ACT, S. 9.

[I. L. R. 15 Mad. 356

——, Lease to one of several—

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 16 Bom. 568

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[I. L. R. 14 Mad. 465

PARTNERSHIP.

See HINDU LAW—JOINT FAMILY—DEBTS AND JOINT FAMILY BUSINESS.

[I. L. R. 14 Bom. 189

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[I. L. R, 17 Bom. 235

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING.

[I. L. R. 18 Calc. 86

[I. L. R. 17 Bom. 6

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[I. L. R. 19 Calc. 223

——, Share or interest in—

See ATTACHMENT — SUBJECTS OF ATTACHMENT—PARTNERSHIP PROPERTY.

[I. L. R. 13 Mad. 447

[I. L. R. 20 Calc. 693

——, Suit for share of—

See COSTS—COSTS OUT OF ESTATE.

[I. L. R. 16 Bom. 515

—*Partnership shares—Interest.*] The parties to the suit, the heirs and representatives of the original partners, a family carrying on a banking business, made and acted upon a new arrangement of their shares, the amounts of which were found in the first Court, and affirmed on appeal. A decree for an account, and an award of interest at 12 per cent. on the amounts found to be due upon the shares from the date of the closing of the business, was maintained. MUTIA CHETTI *v.* SUBRAMANIEM CHETTI.

[I. L. R. 18 Calc. 616

PASSENGERS INFECTED WITH DISEASE.

See CONTRACT ACT, S. 56.

[I. L. R. 14 Bom. 147

PASTURAGE, RIGHT OF.

See ENGLISH LAW.

[I. L. R. 14 Bom. 213

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[I. L. R. 14 Bom. 213

PATENT, INFRINGEMENT OF.

See INJUNCTION—SPECIAL CASES—TRADE-MARKS.

[I. L. R. 17 Bom. 584

PATNI INTEREST, PURCHASE OF BY ZEMINDAR, EFFECT OF.

See MERGER.

[I. L. R. 19 Calc. 760

PATNI TENURE.

See BENGAL REGULATION VIII OF 1819.

[I. L. R. 17 Calc. 162

See CASES UNDER SALE FOR ARREARS OF RENT.

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.

[I. L. R. 19 Calc. 787

PATNIDAR.

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[I. L. R. 21 Calc. 116

PATWARI.

See EVIDENCE ACT, S. 74.

[I. L. R. 18 Calc. 534

PAUPER, APPLICATION FOR LEAVE TO APPEAL AS.

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PAUPER SUIT.

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1.	Suits	811
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(1) SUITS.

1.—*Continuation in formâ pauperis of suit instituted in ordinary form—Civil Procedure Code (Act XIV of 1882), ss. 401—415.*] A Court has power under Chapter XXVI of the Code of Civil Procedure to allow a suit instituted in the ordinary form to be continued *in formâ pauperis*. THOMPSON *v.* CALCUTTA TRAMWAY COMPANY.

[I. L. R. 20 Calc. 319

2.—*Civil Procedure Code, s. 411—Stamp duty on a pauper's plaint - Decree for less than the amount of claim—Disreputable defence.*] A pauper sued his sister for the partition of property valued at a large sum. The parties belonged to the Bogam caste, residing in the Godavari district. The defendant pleaded that the property had been acquired by her as a prostitute, and denied the plaintiff's claim to it. The plaintiff obtained a decree for Rs. 100, being a moiety of the property found to have been left by their mother:—*Held*, that the defendant was liable to pay Court-fees only on the sum decreed. CHANDRAREKA *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 14 Mad. 163

3.—*Civil Procedure Code*, 1882, *ss.* 412, 622—*Withdrawal and dismissal of suit—Court's authority to make an order for payment of Court-fees—Power of Collector, though not a party to the suit, to move under s.* 622—*Superintendence of High Court.*] The plaintiff, after having filed his suit

PAUPER SUIT—*concluded.*

(1) SUITS—*concluded.*

in formâ pauperis, came to an amicable arrangement with the defendants and asked the Court that the suit should be dismissed. The Court granted this application, but made no order as to the payment of Court-fees. Thereupon the Collector applied to the High Court, under s. 622 of the Code of Civil Procedure (Act XIV of 1882), to direct the lower Court to make an order for the payment of Court-fees under s. 412 of the Code:—*Held*, that the Collector, though not a party to the suit, was entitled to move the High Court under s. 622 of the Code. *Held*, also, that s. 412 had no application to the present case, as there was no adjudication of the rights of the parties, and the plaintiff could not, therefore, be said to have failed in the suit. The Subordinate Judge had, therefore, no jurisdiction to make the order desired by the Collector. Section 412 of the Code applies only to cases of adjudicated failure and to the other cases specified, as where the plaintiff has been dispaupered, or where the suit has been dismissed under s. 97 or s. 98. COLLECTOR OF KANARA *v.* KRISHNAPPA HEDGE.

[I. L. R. 15 Bom. 77

4.—*Civil Procedure Code*, s. 411—*Recovery of Court-fees by Government—Sale of decree.*] *Semble*—The provisions of s. 411 of the Code of Civil Procedure do not justify the Court in selling a decree upon the application of the Collector, inasmuch as that section provides that persons who have been successful as paupers shall, so far as the subject-matter of their success is concerned, be liable to satisfy out of what they recover the amount of the fees, which have been for a time, pending the decision of their suit, remitted to them. *Sultan Koer* v. *Gulzari Lal*, I. L. R. 2 All. 290, and *Tiruvengada Chari* v. *Vythilinga Pillai*, I. L. R. 6 Mad. 418, followed. JOTINDRO NATH CHOWDHRY *v.* DWARKA NATH DEY.

[I. L. R. 20 Calc. 111

(2) APPEALS.

5.—*Civil Procedure Code, ss.* 411, 412—*Right of appeal—Right of Government to appeal in respect of Court-fee on portion of plaintiff's claim dismissed.*] In a suit *in formâ pauperis* the District Judge decreed the plaintiff's claim in part and dismissed it in part, but omitted to make any provision for payment to Government of the Court-fee on the portion which was dismissed. The Secretary of State, not having been a party to the litigation in the Court below, then preferred an appeal in respect of the Court-fee on that portion of the plaintiff's claim which had been dismissed:—*Held*, that such an appeal would lie; though the more suitable procedure would have been for the Government to have applied, through the Collector, to the Court of First Instance to review its judgment and to repair the omission in its decree. *Janki* v. *Collector of Allahabad*, I. L. R. 9 All. 64, referred to. SECRETARY OF STATE FOR INDIA *v.* BHAGWANTI BIBI.

[I. L. R. 13 All. 326

PAYMENT INTO COURT.

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

[I. L. R. 21 Calc. 566

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE.

[I. L R. 13 All. 195

See TENDER.

[I. L. R. 16 Bom. 141

Order in execution that defendant pay money into Court—Appeal by plaintiff against order—Payment into Court by defendant—Refusal of plaintiff pending appeal to take money out of Court—Attachment of the money so paid in by another creditor of defendant and payment to him—Subsequent application by plaintiff in execution for payment—Effect of his previous refusal.] In execution of a decree against the defendant obtained by the plaintiff, an order was made, directing the defendant (*inter alia*) to pay into Court the sum of Rs. 140-8-0. Both parties appealed against this order, but pending the appeals the defendant paid the amount into Court. The plaintiff, however, refused to take it, on the ground that he had appealed against the order under which it was paid in, and the Court subsequently passed an order that the money should be returned to the defendant. But before this could be done, the money was attached by a third person, in execution of his decree against the defendant, and a few days afterwards the money was paid over to him. Shortly afterwards the appeal against the order directing the defendant to pay Rs. 140-8-0 to the plaintiff was heard, and the order was confirmed. Thereupon the plaintiffs applied in execution (*inter alia*) for payment of the sum of Rs. 140-8-0. The defendant contended that he had already paid it. The Subordinate Judge directed the defendant to pay this sum into Court within one month. The defendant appealed to the District Court, who confirmed the order of the Subordinate Judge. The defendant then appealed to the High Court:—*Held*, that the orders of the lower Courts should be reversed. When the defendant paid the Rs. 140-8-0 into Court in execution of the decree, the Court held the money on account of the plaintiff, and the plaintiff, who had not obtained a stay of execution, could not refuse to take it because an appeal was pending. The plaintiff's refusal, therefore, to take the money out of Court, did not justify the Subordinate Judge in treating the money as the defendant's and in ordering it to be paid to another judgment-creditor of the defendant without his having in any way expressed his assent to the money being so treated. LAKSHMAN DADAJI *v.* DAMODAR AMBADAS.

[I. L. R. 15 Bom. 681

PENAL CODE (ACT XLV OF 1860.)

See WHIPPING.

[I. L. R. 16 Bom. 357

———, ss. 1, 2.

See CRIMINAL PROCEEDINGS.

[I. L. R. 13 Mad. 353

PENAL CODE (ACT XLV OF 1860)—*contd.*

———, s. 22.

See THEFT.

[I. L. R. 15 Bom. 702

———, s. 24.

See FORGERY.

[I. L. R. 19 Calc. 380

[I. L. R. 15 All. 210

See RIOTING.

[I. L. R. 15 All. 22

———, s. 25.

See FORGERY.

[I. L. R. 19 Calc. 380

[I. L. R. 15 All. 210

———, s. 34.

See ACCOMPLICE.

[I. L. R. 14 Bom. 115

———, s. 43.

See s. 177.

[I. L. R. 14 Mad. 484

———, s. 70.

See FINE.

[I. L. R. 20 Calc. 478

———, s. 71.

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105

[I. L. R. 17 Bom. 260

———, s. 81 and s. 323.—*Act likely to cause harm, done without a criminal intent and to prevent other harm—Causing hurt.*] The accused was a sepoy in a native infantry regiment. On the occasion of a fire in the city of Ahmednagar, he and the rest of his company turned out to assist in extinguishing it. He with other sepoys was stationed by their officer with orders to keep clear a space in front of the burning house, and not to allow any one not in uniform to intrude on that space. The Police under the city chief constable were also engaged at the fire, and on some of them coming round from the rear they were warned off by the sentries. A fraças between the soldiers and the police took place, and the chief constable was kicked by the accused. For this he was charged before the Magistrate, and fined for voluntarily causing hurt under s. 323 of the Penal Code. In evidence it appeared that the Police attempted to force the military guard, which had been posted as above stated, and it was further proved that the chief constable was not in uniform, and that the accused did not know who he was. It was not alleged that the kick was unnecessarily violent:—*Held*, that the conviction was bad. The Magistrate having found that the chief constable was not in uniform, and that the accused did not know who he was, the kick was justifiable as given in good faith for the purpose of preventing much greater harm under s. 81 of the Indian Penal Code, and as a means of acting up to the military order. QUEEN-EMPRESS *v.* BOSTAN.

[I. L. R. 17 Bom. 626

PENAL CODE (ACT XLV OF 1860)—*contd.*

———, s. 84.

See INSANITY.

[I. L. R. 14 Bom. 564

———, s. 94.

See ACCOMPLICE.

[I. L. R. 14 Bom. 115

———, s. 99.

See PRIVATE DEFENCE, RIGHT OF.

[I. L. R. 14 Bom. 441

———, s. 105.

See PRIVATE DEFENCE, RIGHT OF.

[I. L. R. 14 Bom. 441

———, s. 109.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[I. L. R. 14 Mad. 364

———, s. 124A.—*Exciting disaffection towards Government—Disapprobation of doings of Government, expression of.*] "Disaffection" and "disapprobation" explained, and s. 124A referred to and explained to the Jury. QUEEN-EMPRESS *v.* JOGENDRA CHUNDER BOSE.

[I. L. R. 19 Calc. 35

———, ss. 141, 143.

See UNLAWFUL ASSEMBLY.

[I. L. R. 14 Mad. 126

———, s. 146.

See RIOTING.

[I. L. R. 13 Mad. 148

———, s. 147.

See RIOTING.

[I. L. R. 15 All. 22

———, s. 148.

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105

[I. L. R. 17 Bom. 260

———, s. 148.—"*Deadly weapon*"—*Lathi.*] The question whether or not a *lathi* is a "deadly weapon" within the meaning of s. 148 of the Penal Code is a question of fact to be determined on the special circumstances of each case as it arises. QUEEN-EMPRESS *v.* NATHU.

[I. L. R. 15 All. 19

———, s. 149.

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R. 17 Bom. 260

———, s. 152.

See SENTENCE — CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105

PENAL CODE (ACT XLV OF 1860)—*contd.*

———, s. 152.—*Assaulting or obstructing public servant in discharge of his duties—Charge, form of—General charge.*] Section 152 of the Penal Code contemplates an assault or obstruction to some particular public servant, and where the charge against accused persons as framed was merely to the effect that they assaulted and obstructed "members of the Police force" in the discharge of their duties, &c. :—*Held*, that a conviction under that section could not be supported. FERASAT *v.* QUEEN-EMPRESS.

[I. L. R. 19 Calc. 105

———, s. 154.

See RIOTING.

[I. L. R. 12 All. 550

———, s. 166.

See PUBLIC SERVANT.

[I. L. R. 15 Mad. 127

———, s. 173.—*Criminal Procedure Code (Act X of 1882), ss. 69, 71—Criminal Procedure Code (Act X of 1872), s. 154—Refusal to sign receipt for summons.*] A mere refusal to sign a receipt for a summons is not an offence under s. 173 of the Penal Code. QUEEN-EMPRESS *v.* KRISHNA GOBINDA DAS.

[I. L. R. 20 Calc. 358

———, s. 174.

See CONTEMPT OF COURT—PENAL CODE, S. 174.

[I. L. R. 16 Mad. 463

———, s. 175.

See CONTEMPT OF COURT—PENAL CODE, S. 175.

[I. L. R. 13 Mad. 24

———, s. 176.

See INFORMATION OF COMMISSION OF OFFENCE

[I. L. R. 20 Calc. 316

———s. 177 and s. 43.—*Giving false information to Police—"Legally bound."*] On 22nd November 1890 the accused, who was a Deputy Tehsildar, submitted to his official superior a false "*nil*" return of lands in his enjoyment, and also on 5th December 1890 made a false statement to the same effect in a revenue enquiry before the Principal Assistant Collector. He was convicted of an offence under Penal Code, s. 177 :—*Held*, that inasmuch as he was not "legally bound" within the meaning of s. 43 of the Code to give the information, the conviction was wrong. *Virasami Mudali* v. *Queen*, I. L. R. 4 Mad. 144, dissented from. QUEEN-EMPRESS *v.* APPAYYA.

[I. L. R. 14 Mad. 484

———, s. 180.—*Criminal Procedure Code (Act X of 1882), ss. 69, 71—Criminal Procedure Code (Act X of 1872), s. 154—Refusal to sign receipt for summons.*] A mere refusal to sign a receipt for a summons is not an offence under s. 180 of the Penal Code. QUEEN-EMPRESS *v.* KRISHNA GOBINDA DAS.

[I. L. R. 20 Calc. 358

PENAL CODE (ACT XLV OF 1860)—*contd.*

——, s. 182.

See SANCTION TO PROSECUTION—NATURE, FORM, AND SUFFICIENCY OF SANCTION.

[I. L. R. 20 Calc. 474

1.—s. 182.—*Giving false information to public servant—Definition of offence provided for in s.* 182 *explained.*] In order to constitute the offence defined in s. 182 of the Penal Code it is not necessary that the public servant to whom false information is given should be induced to do anything or to omit to do anything in consequence of such information. The gist of the offence is not what action may or may not be taken by the public servant to whom false information is given; but the intention or knowlege (to be inferred from his conduct) of the person supplying such information. *In the matter of the Petition of Golam Ahmed Kazi*, I. L. R. 14 Calc. 314, dissented from. QUEEN-EMPRESS *v.* BUDH SEN.

[I. L. R. 13 All. 351

2.—s. 182.—*False information to a public servant—False complaints to Police.*] Where as the result of a Police investigation it appears that a complaint made to the Police of the commission of an offence punishable under the Penal Code is false, it is not necessary that the complainant should be given any further opportunity of establishing the truth of his allegations before his prosecution under s. 128 of the Penal Code is ordered. QUEEN-EMPRESS *v.* RAGHU TIWARI.

[I. L. R. 15 All. 336

——, s. 183.

See s. 186.

[I. L. R. 15 Mad. 226

——, s. 183.—*Resistance to taking of property by the authority of a public servant—Objection to attachment of property in execution of a decree.*] A mere oral statement, by a person claiming to be the owner of certain articles attached by a bailiff in execution of a decree, to the effect that he would not allow the bailiff to take away the articles unless he entered them as his property, does not amount to an offence under s. 183 of the Indian Penal Code. QUEEN-EMPRESS *v.* HUSAIN.

[I. L. R. 15 Bom. 564

——, s. 186.

See COMPENSATION—COMPENSATION TO ACCUSED ON DISMISSAL OF COMPLAINT.

[I. L. R. 20 Calc. 481

1.—s. 186.—*Public servant—Ameen appointed under Bengal Tenancy Act (VIII of* 1885), *s.* 69—*Bengal Tenancy Act, s.* 89.] A person nominated by the Collector, under s. 69 of the Bengal Tenancy Act, for the purpose of making a division of crops between the landlord and the tenant, is not a public servant within the meaning of s. 186 of the Penal Code. CHATTER LAL *v.* THACOOR PERSHAD.

[I. L. R. 18 Calc. 518

PENAL CODE (ACT XLV OF 1860)—*contd.*

2.—s. 186.—*Obstructing a public servant—Public vaccinator.*] To spread a false report and thereby prevent persons from bringing their children for vaccination to the public vaccinator is not an offence under Penal Code, s. 186. QUEEN-EMPRESS *v.* THIMMACHI.

[I. L. R. 15 Mad. 93

3.—s. 186 and s. 183.—*Obstructing public servant—"Voluntarily."*] A District Judge ordered that the house of the defendant in a suit pending before him be searched and certain property brought to the Court, and appointed a commissioner to carry out this order. The commissioner went to the house, but the defendant shut the doors and would not admit him. A crowd collected, and the commissioner felt it would be unsafe to proceed to carry out the order by force, and was unable to do so otherwise. The defendant was prosecuted and sentenced under Penal Code, s. 186:—*Held*, that the facts disclosed no offence under that section. The use of the word "voluntarily" in that section seems to contemplate some overt act of obstruction, and not that mere passive conduct should be penal. QUEEN-EMPRESS *v.* SOMMANNA.

[I. L. R. 15 Mad. 221

——, s. 188.

See BOMBAY DISTRICT MUNICIPAL ACT, s. 73.

[I. L. R. 14 Bom. 180

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[I. L. R. 14 Bom. 165

——, s. 188.—*Disobedience to order duly promulgated by public servant—Criminal Procedure Code, ss* 133, 140.] A person against whom an order under s. 133 of the Code of Criminal Procedure is passed, who neglects to take any steps whatever in respect of such order within the time therein specified, either by way of compliance therewith or by way of objection thereto in the manner prescribed by law, renders himself liable to be proceeded against under s. 188 of the Penal Code without its being necessary to wait until the order has been made absolute. If such order is made absolute under s. 140 of the Code of Criminal Procedure, further proceedings can then be had under s. 188 of the Penal Code, against the person disobeying the order absolute. When an order under s. 133 of the Code of Criminal Procedure has been made absolute under s. 140, its validity cannot subsequently be questioned. *Queen-Empress v. Narayana*, I. L. R. 15 Mad. 475, approved. QUEEN-EMPRESS *v.* BISHAMBAR LAL.

[I. L. R. 13 All. 577

——, s. 191.

See FALSE EVIDENCE.

[I. L. R. 15 All. 11

PENAL CODE (ACT XLV OF 1860)—*contd.*

———, s. 193.

See FALSE EVIDENCE.

[I. L. R. 19 Calc. 355
[I. L. R. 15 All. 11
[I. L. R. 20 Calc. 719, 724

———, s. 199.

See FALSE EVIDENCE.

[I. L. R. 20 Calc. 724

———, s. 206, Charge under—

See EVIDENCE ACT, ss. 14, 15.

[I. L. R. 16 Bom. 414

———, s. 212.—*Harbouring an offender.*] To justify a conviction under s. 212 of the Penal Code, it is necessary that there should be an offence committed, and consequently an offender who has been harboured or concealed. *Empress* v. *Abdul Kadir*, I. L. R. 3 All. 279, referred to. QUEEN-EMPRESS *v.* FATEH SINGH.

[I. L. R. 12 All. 432

———, s. 214.

See COMPOUNDING OFFENCE.

[I. L. R. 14 Mad. 400

———, s. 224.

See ESCAPE FROM CUSTODY.

[I. L. R. 21 Calc. 337

———, s. 228.

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R. 15 Mad. 131

———, s. 268.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[I. L. R. 20 Calc. 665

———, s. 269.

See CONTRACT ACT, s. 56.

[I. L. R. 14 Bom. 147

———, s. 283.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[I. L. R. 20 Calc. 665

———, s. 290.

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[I. L. R. 14 Mad. 364
[I. L. R. 20 Calc. 665

———, s. 295.

See RELIGION, OFFENCES RELATING TO.

[I. L. R. 17 Calc. 852

See STATUTES, CONSTRUCTION OF.

[I. L. R. 17 Calc. 852

PENAL CODE (ACT XLV OF 1860)—*contd.*

———, s. 300.

See CULPABLE HOMICIDE.

[I. L. R. 18 Calc. 484

———, s. 302.

See ATTEMPT TO COMMIT OFFENCE.

[I. L. R. 15 Bom. 194

———, ss. 304, 304A.

See HURT—GRIEVOUS HURT.

[I. L. R. 18 Calc. 49

———, s. 307.

See ATTEMPT TO COMMIT OFFENCE.

[I. L. R. 15 Bom. 194
[I. L. R. 14 All. 38

———, s. 323.

See s. 81.

[I. L. R. 17 Bom. 626

———, s. 325.

See HURT—GRIEVOUS HURT.

[I. L. R. 18 Calc. 49

———, s. 326.

See REVISION—CRIMINAL CASES—COMMITMENT.

[I. L. R. 16 Bom. 580

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R. 17 Bom. 260

———, ss. 332, 333.

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105

———, s. 338.

See HURT.

[I. L. R. 18 Calc. 49

———, s. 344.

See UNLAWFUL COMPULSION.

[I. L. R. 19 Calc. 572

———, s. 352.

See UNLAWFUL COMPULSION.

[I. L. R. 19 Calc. 572

———, s. 361.

See KIDNAPPING.

[I. L. R. 17 Calc. 298

———, s. 366.

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 14 All. 25

See CRIMINAL PROCEDURE CODE, s. 238.

[I. L. R. 20 Calc. 483

1.—s. 372.—*Illegal disposal of a minor—Dedication of dancing-girl to temple.*] A dancing-woman of a temple applied to the manager of the temple for the appointment of a minor girl, whom she falsely described as her daughter, to her *kothu miras*; the manager ordered tha

PENAL CODE (ACT XLV OF 1860), s. 372 —*continued.*

the girl be placed on the pay abstract like other dancing-girls, and she was employed about the temple, though the ceremony of tying the *bottu* (after which the girl could not be married) did not take place:—*Held*, that the above facts constituted *primâ facie* evidence that an offence under Penal Code s. 372, had been committed by the dancing-woman, the manager abovenamed, and the parents of the girl. SRINIVASA *v.* ANNASAMI.

[I. L. R. 15 Mad. 41

2.—s. 372.—*Disposal of a minor—Dedication of a girl in a temple.*] The accused dedicated his minor daughter as a Basivi by a form of marriage with an idol It appeared that a Basivi is incapable of contracting a lawful marriage, and ordinarily practises promiscuous intercourse with men, and that her sons succeed to her father's property:—*Held*, the accused had committed an offence under Penal Code, s. 372. QUEEN-EMPRESS *v.* BASAVA.

[I. L. R. 15 Mad. 75

3.—s. 372—*Illegal disposal of a minor—Dedication of girl to temple as dancing-girl—Revision.*] A dancing-woman (fourth accused) of a temple applied to the manager (first accused) of the temple for the appointment of a girl under the age of sixteen, whom she had adopted as her daughter, to her *kothu mirasi* office, to which duties more or less connected with the preparation of provisions of the temple were attached. The manager, before whom the girl had sung and danced, ordered that she be placed on the pay abstract like other dancing-girls, and she was employed in the above-mentioned duties about the temple for about five months. It appeared that the dancing-women of the temple lived partly at least by prostitution, and there was evidence that the girl sang and danced in the temple, received wages and wore a *bottu* (an emblem of marriage). The Magistrate upon these facts refused to frame a charge against the manager of the temple and the adoptive mother of the minor under the Penal Code, s. 372:—*Held*, *per* COLLINS, C. J. (PARKER J., dissenting), that the Magistrate should have framed a charge. On a petition under the Criminal Procedure Code, ss. 435, 439, preferred by the complainant, who was a dismissed servant of the temple, after the prosecution had been pending for two years, it appeared that the girl had suffered no harm:—*Held*, that whether or not the Magistrate should have framed a charge, the High Court was not bound to send the case for re-trial. SRINIVASA *v.* ANNASAMI.

[I. L. R. 15 Mad. 323

4.—s. 372.—*Minor, illegal disposal of—Dedication of a minor to the service of a temple with the knowledge that she was likely to be used for immoral purposes—Dancing-girls.*] The accused dedicated his minor daughter, five or six years of age, to the service of a temple as a dancing-girl. The evidence showed that dancing-girls attached to a temple, as a rule, led immoral lives:—*Held*, that these facts were sufficient to constitute an offence under s. 372 of the Penal Code. QUEEN-EMPRESS *v.* TIPPA.

[I. L. R. 16 Bom. 737

PENAL CODE (ACT XLV OF 1860), s. 372 —*concluded.*

5.—s. 372.—*Letting to hire a girl under sixteen for immoral purpose for one occasion—Prostitution for a course of life—Criminal Procedure Code (Act X of 1882), s. 273.*] A young prostitute under sixteen years of age was brought to a house of assignation by the accused at the request of the complainant and for his supposed use on that one occasion, it not being contemplated that the girl should be sold or let out for a period of employment, or for the purpose of being employed by the complainant as a prostitute, or for the purpose of being disposed of by him for that course of life:—*Held*, that such a letting out by the accused was not within the meaning of s. 372 of the Penal Code, which on the authorities contemplates a case of letting or hiring or other similar transaction by which the possession of a girl is obtained with the intention of employing her habitually for the purpose of indiscriminate sexual intercourse. *Dowlath Bee* v. *Shaik Ali*, 5 Mad. 473, followed. QUEEN-EMPRESS *v.* SUKEE RAUR.

[I. L. R. 21 Calc. 97

———, s. 374.

See UNLAWFUL COMPULSION.

[I. L. R. 19 Calc. 572

———, s. 378.

See POST OFFICE ACT, s. 48.

[I. L. R. 14 Mad. 229

See THEFT.

[I. L. R. 17 Calc. 852

[I. L. R. 15 Bom. 344, 702

———, s. 379.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 17 Bom. 369

———, s. 391.

See RIOTING.

[I. L. R. 15 All. 22

———, s. 395.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 17 Bom. 369

See DACOITY.

[I. L. R. 15 All. 299

———, s. 398.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 17 Bom. 369

———, s. 403.

See POST OFFICE ACT, s. 48.

[I. L. R. 14 Mad. 229

See THEFT.

[I. L. R. 17 Calc. 852

PENAL CODE (ACT XLV OF 1860)—*contd.*

——, s. 411.

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 15 Bom. 369

See STOLEN PROPERTY, OFFENCES RELATING TO.

[I. L. R. 15 All. 317

[I. L. R. 21 Calc. 328

——, s. 413.

See STOLEN PROPERTY, OFFENCES RELATING TO.

[I. L. R. 19 Calc. 190

——, s. 415.

See CHEATING.

[I. L. R. 17 Calc. 606

See FORGERY.

[I. L. R. 19 Calc. 380

——, s. 419.

See CHEATING.

[I. L. R. 17 Calc. 606

See FORGERY.

[I. L. R. 13 Mad. 27

——, s. 420.

See FORGERY.

[I. L. R. 13 Mad. 27

——, s. 425.

See THEFT.

[I. L. R. 17 Calc. 852

——, s. 463.

See FORGERY.

[I. L. R. 15 All. 210

——, ss. 467, 468.

See FORGERY.

[I. L. R. 12 Mad. 27

——, s. 471.

See FORGERY.

[I. L. R. 19 Calc. 380

[I. L. R. 15 All. 210

——, ss. 474, 475.

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 16 Bom. 165

——, s. 475.—*Possession of papers bearing counterfeit marks or devices—Charge under s. 475 how to be framed—Misdirection—Evidence.*] During the course of a Police investigation into a complaint of theft, the house of the accused was searched and a bundle of papers, about 58 in number, were found which were alleged to be forgeries or preparations for forgeries. The accused was thereupon committed to the Court of Session on a charge under s. 475 of the Penal Code. A few days before the trial of the accused the Police searched the house of one *S.* who was a witness for the defence, and there discovered a batch of suspicious papers which were produced at the trial, and put in as evidence against the accused. The accused was convicted of the offence under s. 475 of the Penal Code and sentenced to transportation for life:—*Held*, reversing the conviction and sentence, that the suspicious papers found in *S's* house were not admissible in evidence against the accused. *Held*, further, that the Judge's direction to the jury regarding those papers, that they established a connection between the accused and many of the witnesses belonging to the same faction, and that they showed the extent to which the practice of forgery had gone in the village, and that in this way they were relevant to the question of guilty knowlege and intention—was a misdirection which prejudiced the accused. In the trial of an accused person on a charge under s. 475 of the Penal Code, the charge should be so framed as to specify distinctly that part of the section which is applicable to the case, and should distinctly specify the particular papers bearing a counterfeit mark or device which the accused was alleged to have had in his possession with the intent mentioned in the section. QUEEN-EMPRESS *v.* ABAJI RAMCHANDRA.

[I. L. R. 15 Bom 189

——, s. 494.

See BIGAMY.

[I. L. R. 18 Calc. 264

[I. L. R. 19 Calc. 79, 627

——, s. 498.

See CRIMINAL PROCEDURE CODE, s. 238.

[I. L. R. 20 Calc. 483

——, s. 499.

See DEFAMATION.

[I. L. R. 15 Mad. 214, 414

[I. L. R. 15 Bom. 351

——, s. 500.

See DEFAMATION.

[I. L. R. 15 Bom. 286

[I. L. R. 16 Mad. 235

[I. L. R. 17 Bom. 127, 573

——, s. 511.

See CASES UNDER ATTEMPT TO COMMIT OFFENCE.

PENALTY.

See CASES UNDER INTEREST—STIPULATIONS AMOUNTING TO PENALTIES OR OTHERWISE.

See MADRAS DISTRICT MUNICIPALITIES ACT, s. 261.

[I. L. R. 16 Mad. 474

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT.

[I. L. R. 20 Calc. 676

PENSION.

See TREATY, CONSTRUCTION OF.

[I. L. R. 17 Calc. 234
[L. R. 16 I. A. 175

——, Political pension.

See ATTACHMENT — SUBJECTS OF ATTACHMENT—PENSION.

[I. L. R. 18 Calc. 216

PENSIONS ACT (XXIII OF 1871).

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[I. L. R. 14 Bom. 320

1.—s. 4.—*Jurisdiction of Civil Court—Abkari revenue—Inamdar, right of, to abkari revenue under grant from Peshwa.*] The Peshwa's Government granted in *inam* to the plaintiff's ancestor, by *sanad*, the villages of Golap and Randpar. The *sanad* granted "water, trees, grass, wood, quarries, mines, buried treasure, present and future cesses, and taxes and assessments." The plaintiff brought the present suit to recover from the defendant a part of the *abkari* revenue for 1884-85 and 1885-86. He contended that the revenue derived by the Government for tapping trees in the villages aforesaid was a tax within the contemplation of the grant:—*Held*, that the Court had no jurisdiction to entertain the suit, under the Pensions Act (XXIII of 1871). The tax in question was a money tax, and as soon as it was imposed, the grant, if it entitled the *inamdar* to the tax, operated as a grant of the money to be derived from the tax, and was, therefore, within the spirit, if not the letter, of the Pensions Act, the object of which was to reserve to the Government the determination of all questions affecting grants of money, the bestowal of which was an act of grace or State policy on the part of the ruling power. JANARDHAN BHASKAR *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 14 Bom. 573

2.—s. 4.—*Meaning of the word "pension"—Suit for a cash allowance payable by an inamdar—Necessity of Collector's certificate.*] Plaintiff sued, as the trustee of a *devasthan*, to recover the amount of a cash allowance attached to the worship of certain idols in the village of Ankli. The plaintiff alleged that the defendant, who was the *inamdar* of the village, received its revenues subject to the payment of the allowance in question, and that he had wrongfully appropriated the latter for the three years preceding suit:—*Held*, that the allowance in question was "a grant of money" within the meaning of s. 4 of the Pensions Act (XXIII of 1871), and that the suit would not lie in the absence of the Collector's certificate, though Government was not a party to the suit. VYANKAJI *v.* SARJARAO APAJIRAO.

[I. L. R. 16 Bom. 537

3.—s. 4.—*Suit relating to right of management of saranjam lands.*] Where a suit was brought in relation to the management of *saranjam* lands:

PENSIONS ACT (XXIII OF 1871), s. 4—*concluded.*

—*Held*, that the suit was *primâ facie* one not included in the Pensions Act. KESHAVRAV *v.* GANPATRAO NILKANTH NAGARKAR.

[I. L. R. 16 Bom. 596

4.—s. 4.—*Collector's certificate—Execution of decree—"Suit"—Desaigiri hak, sale of.*] The word "suit" in s. 4 of the Pensions Act (XXIII of 1871) does not include execution-proceedings. The Collector's certificate is not necessary to validate the sale of a *desaigiri hak* in execution of a decree. VAJIRAM BHAGVAN *v.* RANCHORDJI GOPALJI.

[I. L. R. 16 Bom. 731

5.—s. 4 and s. 6.—*Collector's certificate—Certificate not obtained when suit filed—Certificate not produced at hearing—Adjournment asked for and refused—Certificate accepted in appeal and placed on record—Practice.*] A suit under the Pensions Act (XXIII of 1871) is not bad *ab initio* by reason of its being filed without a Collector's certificate. Where at the hearing of such a suit the necessary certificate was not produced, *held*, that the Judge ought to have granted the plaintiffs' application for an adjournment, in order that the certificate might be obtained and produced. JIJAJI PRATAPJI RAJE *v.* BALKRISHNA MAHADEO.

[I. L. R. 17 Bom. 169

6.—s 4 and s. 6.—*Suit in Court of Agent for Sirdars in the Deccan—Bombay Regulation XXIX of* 1827, *ss. 4 and 6—Bombay Regulation II of* 1827—*Certificate of Collector.*] A suit brought against a *sirdar* in the Court of the Agent for Sirdars in the Deccan, of the class specified in s. 4 of the Pensions Act (XXIII of 1871) requires a Collector's certificate as provided by s. 6 of that Act. DAJI NILKANTH NAGARKAR *v.* GANPATRAO NILKANTH NAGARKAR.

[I. L. R. 17 Bom. 224

——, s. 6.—*Suit for a declaration of title to stanom of fifth Raja of Palghat.*] Suit to declare plaintiff's title to the *stanom* of fifth Raja of Palghat; the first Raja (defendant No. 1) received a *malikana* allowance from Government payable to the various *stanomdars*, but had refused to pay to plaintiff the fifth Raja's share:—*Held*, the suit was not one relating to any pension or grant of money or land revenue conferred by Government, but was merely a suit for a declaration as to the plaintiff's *status*: and the Pensions Act, s. 6, was therefore not applicable to the case. KOMBI *v.* AUNDI.

[I. L. R. 13 Mad. 75

PEREMPTION OF APPEAL.

See LETTERS PATENT, HIGH COURT, CL. 15.

[I. L. R. 17 Calc. 66

PERJURY.

See CRIMINAL PROCEEDINGS.

[I. L. R. 16 Bom. 729

PERMIT FOR REMOVAL OF RUBBISH.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 412.

[I. L. R. 20 Calc. 605

PERPETUITIES, RULE AGAINST.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 424, 448

PERSONÆ DESIGNATÆ.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 448

PERSONS NOT PARTIES TO SUIT, RIGHT OF TO QUESTION ORDER IN EXECUTION.

See LIMITATION ACT, 1877, ART. 179—LAW APPLICABLE TO APPLICATION IN EXECUTION OF DECREE.

[I. L. R. 17 Calc. 491

PETITION.

See EVIDENCE ACT, s. 35.

[I. L. R. 15 Mad. 19

——— containing defamatory statements.

See PRACTICE — CRIMINAL CASES—PETITION FOR BAIL.

[I. L. R. 15 Bom. 488

———, verification of—

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION.

[I. L. R. 20 Calc. 879

PILGRIMS, CONTRACT TO CARRY.

See CONTRACT ACT, s. 56.

[I. L. R. 14 Bom. 147

PLAINT.

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1.	Form and Contents of Plaint ...	828
	(*a*) Frame of suits generally ...	828
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2.	Verification and Signature ...	829
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[I. L. R. 15 Mad. 19

———, Amendment of—

See APPELLATE COURT—OTHER ERRORS AFFECTING MERITS.

[I. L. R. 15 All. 380

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[I. L. R. 14 Bom. 395

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See JURISDICTION—CAUSES OF JURISDICTION—CAUSE OF ACTION.

[I. L. R. 15 Bom. 93

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See LIMITATION ACT, 1877, s. 22.

[I. L. R. 15 Mad. 417

[I. L. R. 17 Bom. 413

See MAMLATDARS COURTS ACT, s. 8.

[I. L. R. 14 Bom. 581

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS.

[I. L. R. 17 Bom. 413

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS.

[I. L. R. 19 Calc. 678

See RIGHT OF APPEAL.

[I. L. R. 17 Bom. 466

See VARIANCE BETWEEN PLEADING AND PROOF.

[I. L. R. 17 Bom. 365

———, Copy of document filed with—

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[I. L. R. 15 Bom. 687

———, Presentation of—

See LIMITATION ACT, 1877, s. 4.

[I. L. R. 19 Calc. 780

[I. L. R. 15 All. 65

[I. L. R. 20 Calc. 41

———, Rejection of—

See APPEAL—ORDERS.

[I. L. R. 17 Bom. 56

———, Wrongly framed—

See MADRAS LOCAL BOARDS ACT, s. 27.

[I. L. R. 16 Mad. 296, 317

(1) FORM AND CONTENTS OF PLAINT.

(*a*) FRAME OF SUITS GENERALLY.

1.—*Civil Procedure Code, s.* 50—*Inconsistent causes of action—Suit to set aside deed of sale—Inconsistency in pleading the suit.*] In a suit for cancellation of a sale-deed by the person whose name appeared on it as executant, it was alleged in the plaint that it was a forgery, and that if it was not a forgery, its execution had been obtained by fraud, and that it was, moreover, void for want of consideration:—*Held*, that the gist of the plaintiff's charge against the defendant being that she had never executed a sale-deed in his favour, and that the document set up by him was a forgery.

PLAINT—*continued.*

(1) FORM AND CONTENTS OF PLAINT—*concluded.*

(*a*) FRAME OF SUITS GENERALLY—*concluded.*

it was not competent to the plaintiff to combine with this charge as an alternative the wholly inconsistent charge that if she did execute the document no consideration was received by her or that fraud had been practised upon her. *Mahomed Buksh Khan* v. *Hosseini Bibi*, I. L. R. 15 Calc. 684: L. R. 15 I. A. 81, followed IYYAPPA *v.* RAMALAKSHMAMMA.

[I. L. R. 13 Mad. 549

(*b*) PLAINTIFFS.

2.—*Suit by club—Goods supplied to a member—Parties.*] An action to recover the price of goods supplied to a member of a non-proprietary club or on his responsibility cannot be brought in the name of the Secretary of the club. MICHAEL *v.* BRIGGS.

[I. L. R. 14 Mad. 362

(*c*) DEFENDANTS.

3.—*Bombay Act III of* 1867, *s.* 11—*Cantonment committee—Contracts entered into in a corporate character—Liability to be sued on such contracts as a corporation.*] The plaintiffs sued the Poona Cantonment Committee to recover damages for breach of a conservancy contract. The committee was created by rules made by the Local Government under s. 11 of Bombay Act III of 1867. The committee ordinarily consisted of certain officials acting *ex officio*. It was part of their duty to provide for the management and regulation of public roads, of conservancy, and drainage within the cantonment. They defrayed the expenses of such management out of the cantonment fund placed at their disposal. The defendants contended that the suit was not properly framed, and that all the members of the committee should be made parties:—*Held*, that the suit was properly constituted. The rules by which the committee was created did, by implication, though not by express words, create the committee a corporation for the purposes of the conservancy of the cantonment. It could, therefore, sue and be sued in its own name on contracts entered into in its corporate character. CANTONMENT COMMITTEE, POONA, *v.* BARJORJI BAMANJI.

[I. L. R. 14 Bom. 286

(2) VERIFICATION AND SIGNATURE.

4.—*Parties named as co-plaintiffs—Civil Procedure Code* (*XIV of* 1882), *ss.* 30 *and* 34—*Limitation — Signature of plaint by one of several co-plaintiffs.*] It is not necessary that all the persons named in the plaint as co-plaintiffs should sign and verify the plaint; there being no rule that a person named as a co-plaintiff is not to be treated as a plaintiff unless he signs and verifies the plaint. Three suits for money were filed by one of three joint-creditors, the others being named as co-plaintiffs with him in the plaints, which he alone signed and verified. An order was made by the Court after the filing of the

PLAINT—*continued.*

(2) VERIFICATION AND SIGNATURE—*concld.*

plaints (and at a time when he could not have been added as a plaintiff, the debt being barred by limitation) that one of these joint-creditors should be added as a co-plaintiff, as if he had not been on the record already:—*Held*, that all the joint-creditors became plaintiffs when the plaints were filed, the order adding parties being inoperative, and that the suits when instituted were not defective for want of parties. MOHINI MOHUN DAS *v.* BUNGSI BUDDAN SAHA DAS.

[I. L. R. 17 Calc. 580

5.—*Civil Procedure Code, s.* 52—*Form of verification of plaint.*] In order to constitute a proper verification of a plaint within the meaning of s. 52 of the Code of Civil Procedure it is necessary for the person verifying, if all the facts are within his knowledge, to state distinctly that they are to his knowledge true; and if he has knowledge as to some and only information and belief as to others, to state to which he speaks from his knowledge and to which from his information and belief. A verification in the form—"To the limit (or extent) of my knowledge the purport of this is true," is not such a verification as satisfies the requirements of s. 52 of the Code. *In the matter of Upendro Lal Bose*, I. L. R. 6 Calc. 675, referred to. GIRDHARI *v.* KANHAIYA LAL.

[I. L. R. 15 All. 59

6.—*Civil Procedure Code*, 1882, *ss.* 51 *and* 435—*Principal officer of a Corporation or Company—Verification of plaint by acting manager.*] The Manager at Lucknow of the local branch of the Delhi and London Bank was authorized by a power-of-attorney under the seal of the Company in London, to sue for debts due to the Bank, and to substitute any person for himself, besides doing other acts of management. A power-of-attorney, executed by him as Manager, appointing the accountant of the Bank to be its attorney in Lucknow, did not contain express authority to the person so empowered to sue for debts due to the Bank. The accountant conducted, under this power, the chief business of the branch, and while he was so conducting it this suit was instituted against defendants, of whom some objected that he was not authorized to sign and verify the plaint:—*Held*, that s. 51, Civil Procedure Code, regulating proceedings by or on behalf of ordinary plaintiffs, did not apply, but that s. 435 was applicable, the acting manager appointed as abovementioned being a principal officer of the Bank Corporation within the meaning of that section. DELHI AND LONDON BANK *v.* OLDHAM.

[I. L. R. 21 Calc. 60
[L. R. 20 I. A. 139

(3) AMENDMENT OF PLAINT.

7.—*Civil Procedure Code* (*XIV of* 1882), *s.* 54—*Leave obtained to amend plaint within a certain time—Failure to amend within time allowed—Application for extension of time originally allowed.*] On the 6th April 1891 the plaintiffs

PLAINT—*concluded.*

(3) AMENDMENT OF PLAINT—*concluded.*

obtained an order giving them leave to amend the plaint and proceedings in the suit. By the order this amendment was to be made on or before the 30th April 1891. On the 18th August 1891 the plaintiffs obtained a summons calling on the defendants to show cause why the time allowed for amendment should not be extended for a month, and why the hearing of the suit should not be postponed: —*Held*, making the summons absolute, that although the time originally fixed for amendment had expired, the Judge had a discretion to extend the time, and that under the circumstances the plaintiffs were entitled to the order asked for. BHAGWANDAS BAGLA *v.* ABU AHMED.

[I. L. R. 16 Bom. 263

8.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 53—*Amendment of plaint on appeal—Substitution of legal representative for deceased defendant — Limitation Act, s.* 22.] A suit was brought to recover arrears of rent. The persons whose names were entered on the record as defendants were in fact dead when the suit was instituted. The suit was dismissed. The plaintiff appealed and sought leave to amend the plaint by substituting for the names of the dead men those of their legal representatives, as against whom the suit would then have been barred by limitation:—*Held*, that the amendment should not be allowed. MALLIKARJUNA *v.* PULLAYYA.

[I. L. R. 16 Mad. 319

9.—*Civil Procedure Code, s.* 53—*Alteration of the relief prayed for.*] The restriction as to amendment of a plaint is only as to the nature of the suit: the law prohibits any such amendment as would change the fundamental character of a suit: but an alteration in the relief does not change the character of a suit. Where a purchaser of a mortgage-bond at a sale in execution of decree sued to enforce the bond but did not pray for sale of the mortgaged property:—*Held*, that he might properly have been allowed to amend his plaint and add a prayer for that relief. KASINATH DAS *v.* SADASIV PATNAIK.

[I. L. R. 20 Calc. 805

(4) REJECTION OF PLAINT.

10.—*Civil Procedure Code, s.* 54.] Section 54 of the Civil Procedure Code may be applied at any stage of a suit. KISHORE SINGH *v.* SABDAL SINGH.

[I. L. R. 12 All. 553

PLAINTIFF.

See CASES UNDER PARTIES — ADDING PARTIES TO SUITS—PLAINTIFFS.

See PARTIES—SUBSTITUTION OF PARTIES —PLAINTIFFS.

[I. L. R. 15 Bom. 145

See PLAINT—FORM AND CONTENTS OF PLAINT—PLAINTIFFS.

[I. L. R. 14 Mad. 362

PLAINTIFF—*concluded.*

——, Appeal by one against another—

See PARTIES—SUBSTITUTION OF PARTIES —PLAINTIFFS.

[I. L. R. 15 Bom. 145

See PRACTICE—CIVIL CASES—APPEAL.

[I. L. R. 15 Bom. 145

——, Death of—

See CERTIFICATE OF ADMINISTRATION— RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

[I. L. R. 16 Bom. 519

——, Misdescription of—

See LIMITATION ACT, 1877, s. 22.

[I. L. R. 17 Bom. 41

See PARTIES—ADDING PARTIES TO SUIT —PLAINTIFFS.

[I. L. R. 17 Bom. 413

PLEA.

—*Plea of guilty—Murder—Penal Code* (*Act XLV of* 1860), *s.* 302—*Confession — Procedure.*] The accused, who was a habitual *ganja*-smoker, was charged with the murder of his wife and infant son. In his confession he stated that he had killed his wife, because she quarrelled with him and objected to go to another village, where he proposed a change of house on account of their poverty. He adhered to this statement when placed for trial before the Court of Session. The Sessions Judge treated this statement as a plea of guilty on the charge of murder, convicted the accused and sentenced him to death, subject to confirmation by the High Court:—*Held* (*per* JARDINE and CANDY, JJ.), that the accused's statement did not amount to a plea of guilty on the charge of murdering his wife. He alleged a sudden provocation: he ought, therefore, to have been put on his trial, in order that the Court might ascertain whether the provocation was grave and sudden enough to prevent the offence from amounting to murder. QUEEN-EMPRESS *v.* SAKHARAM.

[I. L. R. 14 Bom. 564

PLEADER. *Col.*

1. Appointment and Appearance ... 833
2. Remuneration 833
3. Removal, Suspension and Dismissal 834
4. Purchase by Pleader at Sale in Execution of Decree 835

——, Authority of—

See OATHS ACT, s. 9.

[I. L. R. 14 Bom. 455

—— not prepared to go on with case.

See APPEAL—DEFAULT IN APPEARANCE.

[I. L. R. 16 Bom. 23

PLEADER—*continued.*

——, Fees of certificate for—

See DECREE — ALTERATION OR AMENDMENT OF DECREE.

[I. L. R. 15 All. 169

(1) APPOINTMENT AND APPEARANCE.

1.—*Civil Procedure Code, s.*39—*Pleader retained by a Collector as agent of Court of Wards—Validity of vakalatnama after the Collector's death.*] The Collector of a district, who was agent for the Court of Wards, filed a suit on behalf of a ward of the Court of Wards and executed a *vakalatnama* to a pleader whom he retained to conduct it. The Collector died before the suit was determined:—*Held*, that it was not necessary for a new *vakalatnama* to be executed to enable the pleader to proceed with the conduct of the suit. KRISHNA VIJAYA PUCHAYA NAICKER *v.* MARUDANAYAGAM PILLAI.

[I. L. R. 15 Mad. 135

2.—*Vakalatnama executed in favour of two vakils accepted by only one—Presentation of appeal under such vakalatnama—Principal and agent—Civil Procedure Code, s.* 541.] An intending appellant executed in favour of two vakils a *vakalatnama;* it was accepted only by one of the vakils, and he presented the appeal. The appeal was placed on the file by the District Judge, but on its coming on for disposal before the Subordinate Judge, he held that it had not been duly presented and made an order rejecting it:—*Held*, that the appeal had been duly presented. AYYANNA *v.* NAGABHOOSHANAM.

[I. L. R. 16 Mad. 285

3—*Application for restoration of an appeal dismissed for default—Vakalatnama.*] Where a vakil had been duly empowered by a *vakalatnama* drawn in the customary form to file and conduct an appeal in the High Court, and that appeal had been dismissed for default:—*Held*, that such vakil was competent without filing a fresh *vakalatnama* to present an application for the restora- of the said appeal to the list of pending appeals. RAGHUNATH SINGH *v.* RAGHUBIR SAHAI.

[I. L. R. 15 All. 55

(2) REMUNERATION.

4.—*Legal Practitioners Act* (*XVIII of* 1879), *ss.* 28, 29—*Promissory note made by a party in favour of his pleader in respect of the fee agreed upon—Agreement not filed in Court.*] A party to a suit made and delivered to his pleader in respect of the fee agreed upon a promissory note which was not filed in Court in that suit. In a suit by the pleader upon his promissory note—*Held*, that the promissory note was invalid, and that the plaintiff was entitled to recover only the amount to which he was found to be entitled for his labour. KRISHNASAMI *v.* KESAVA.

[I. L. R. 14 Mad. 63

PLEADER—*continued.*

(2) REMUNERATION—*concluded.*

5.—*Legal Practitioners Act* (*XVIII of* 1879) *ss.* 27, 28, 29, 30—*Suit by pleader to recover fee from client—Agreement for fee—Agreement not in writing and filed in Court.*] Sections 27, 28 and 29 of the Legal Practitioners Act (XVIII of 1879) do not relate to any arrangements or agreement made between a litigant and his own pleader as to the receipt of his fees which are actually allowed upon taxation. They do not provide as to matters which relate to the opposite party, or the fees that he has to pay to the legal practitioner of the opposite party, but provide what, as between the pleader and his client, shall be the method in which certain special arrangements are to be entered into. They make provision for arrangements between pleaders and their clients, which relate to the payment of remuneration in excess of and apart from the amount allowed in the taxation; and were framed upon the principle which regards with jealous scrutiny contracts brought about by persons holding positions of active confidence towards others, such as a pleader necessarily occupies in reference to his client. They were intended to protect necessitous, improvident, or careless litigants, from being taken advantage of by unscrupulous legal advisers. *Rama* v. *Kunji*, I. L. R. 9 Mad. 375, approved and followed. RAZI-UD-DIN *v.* KARIM BAKHSH.

[I. L. R. 12 All. 169

6.—*Legal Practitioners Act* (*XVIII of* 1879), *s.* 28—*Agreement between pleader and person retaining him—Promissory note, suit on—"Quantum meruit."*] The defendants' brother engaged a vakil (since deceased) to defend certain suits on their behalf and made and delivered to him a promissory note for an agreed sum in respect of his fee. The note was not filed in Court and it exceeded in amount the vakil's regulation fee. The defendants subsequently made a promissory note in substitution for the above, and the vakil's representatives now brought a suit upon the last-mentioned note:—*Held* (1) that the agreement with the defendants' brother was invalid by reason of the Legal Practitioners Act, s. 28, and the plaintiffs were not entitled to recover the amount of the note; (2) that the plaintiffs were entitled to recover in this action the amount due to the vakil independently of that agreement. ANANTAYYA *v.* PADMAYYA.

[I. L. R. 16 Mad. 278

(3) REMOVAL, SUSPENSION AMD DISMISSAL.

7.—*Legal Practitioners Act* (*XVIII of* 1879), *s.* 13—*Grounds for suspension*] A pleader's professional misconduct having amounted to "reasonable cause," within the meaning of s. 13 of the Legal Practitioners Act (XVIII of 1879), for suspending him from practice, their Lordships declined to interfere with the decision of the High Court as to the punishment, it not being clearly shown that the *quantum* awarded was unreasonable and excessive. IN THE MATTER OF QUARRY.

[I. L. R. 13 All. 93
[L. R. 17 I. A. 199

PLEADER—*concluded.*

(4) PURCHASE BY PLEADER AT SALE IN EXECUTION OF DECREE.

S.—*Civil Procedure Code, ss.* 292, 311—*Suit to set aside sale in execution of decree—Duty of vakil purchasing at Court-sale—Fraud.*] A mortgagee, having obtained a decree on her mortgage, brought the mortgage property to sale; and her vakil bid through an agent at the Court-sale and became the purchaser. It appeared that the vakil had not informed his client that he intended to bid nor obtained the sanction of the Court, but he had been instructed by his client and had obtained the permission of the Court to bid on her account, and he was found to have acted in an underhand manner towards her. In a suit to set aside the sale brought by the mortgagor, who had sought unsuccessfully to obtain the same relief by means of a petition under s. 311 in which fraud was not alleged against the purchaser:—*Held* (on its appearing that the vakil had not discharged the burden which lay on him of proving that the transaction was free from suspicion), that the sale should be set aside. SUBBARAYUDU *v.* KOTAYYA.

[I. L. R. 15 Mad. 389

PLEADINGS.

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.

[I. L. R. 17 Calc. 337

See CASES UNDER PLAINT.

See WRITTEN STATEMENT.

[I. L. R. 14 Mad. 172

———, Inconsistency in.

See VARIANCE BETWEEN PLEADINGS AND PROOF.

[I. L. R. 20 Calc. 1

PLEDGE.

See STAMP ACT, 1879, SCH. I, ART. 44.

[I. L. R. 21 Calc. 241

———, Suit for redemption of.

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 3.

[I. L. R. 15 Bom. 30

PLEDGOR AND PLEDGEE.

—*Pledgee taking over the property pledged, crediting the value as if it had been sold to him—Wrongful conversion—Absence of proof of damages to pledgor—Account—Interest.*] Where a pledgee, having power to sell for default, takes over, as if upon a sale to himself, the property pledged without the authority of the pledgor, but crediting its value in account with him, this act, though an unauthorized conversion, does not put an end to the contract of pledge, so as to entitle the pledgor to have the property back without payment. Government paper having been deposited by a borrower from a Bank as security, part was legally sold upon his failing to comply with the terms between them. As to the rest the

PLEDGOR AND PLEDGEE—*concluded.*

borrower, afterwards on redeeming a part, was led to believe that the paper returned was the whole of that which remained unsold in the Bank's possession The Bank, however, had taken over part, as if sold to itself, crediting the price:—*Held*, that the Bank could not, after this, treat the securities as still subject to the pledge; although this transaction had not put an end to the contract of pledge, so as to entitle the pledgor to have back the paper without payment of the loan and interest. The Bank was no longer a pledgee of this paper, but, having converted it to the Bank's own use, might have been liable in damages for the value, including the interest thereon. However, had this liability been enforced, the pledgor could not have had credit in the loan account for the proceeds of the paper. The cessation of interest on the loan was more to his advantage than to receive the interest on the paper, the market value of which was also falling, so that the longer the account had been kept open, the greater the balance would have been against the pledgor. It followed that there was no evidence of damage to him resulting from the conversion. The first Court decreed an account, wrongly deciding that interest could not run upon the loan, which the amount of the paper transferred by the Bank to itself purported to wipe off, from the date of the transfer. On this point, as well as because there was no proof of damage to the pledgor, the High Court, reversing that decree, had rightly dismissed the pledgor's suit. NECKRAM DOBAY *v.* BANK OF BENGAL.

[I. L. R. 19 Calc. 322

[L. R. 19 I. A. 60

POLICE ACT (XLVIII OF 1860).

———, s. 11, cl. (2).—*License—Tea and Soda-water shops.*] The words "hotel, tavern, shop or place" in the second clause of s. 11 of the Police Act (XLVIII of 1860) are wide enough to include every place mentioned in the first clause of that section. Tea and sodawater shops are required to be licensed under the Act. QUEEN-EMPRESS *v.* SHERIAR ARDESEER ERANI.

[I. L. R. 15 Bom. 530

POLICE DIARIES.

See EVIDENCE—CRIMINAL CASES—STATEMENTS TO POLICE-OFFICERS.

[I. L. R. 20 Calc. 642

POLICE-OFFICER.

See CONFESSION—CONFESSIONS TO POLICE-OFFICERS.

[I. L. R. 14 Bom. 260

[I. L. R. 17 Bom. 485

———, Resistance and obstruction to—

See SENTENCE — CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105

POLICE-OFFICER—*concluded.*

——, Statement to—

See DEFAMATION.

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[I. L. R. 21 Calc. 392

(1) EVIDENCE OF TITLE.

1.—*Mere possession on the one side and unjustifiable dispossession on the other—Right of the possessor dispossessed by a wrong-doer, as against the latter.*] Lawful possession of land is sufficient evidence of right as owner, as against a person who has no title whatever, and who is a mere trespasser. The former can obtain a declaratory decree, and an injunction restraining the wrong-doer. ISMAIL ARIFF *v.* MAHOMED GHOUS.

[I. L. R. 20 Calc. 834

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2.—*Suit for damages for value of fruit taken from garden—Right of suit.*] A suit for damages for the value of fruit crops taken away by the defendant from a garden alleged to be in the plaintiff's possession can be sustained on the finding that the plaintiff was in possession up to the date of the institution of the suit: it is not necessary for him to prove his title to the land, unless the defendant shows a better title. In this case, there being no sufficient findings of the plaintiffs' possession to the date of suit, nor that the defendant had failed to show the better title, the suit was remanded for such findings. LEP SINGH KHASIA *v.* NIMAR KHASIA.

[I. L. R. 21 Calc. 244

(2) NATURE OF POSSESSION.

3.—*Decree for possession, non-execution of—Title—Possession taken by rightful owner without Court's intervention—Trespass—Specific Relief Act (I of 1877), s. 9.*] *B* purchased land from *M* and subsequently brought a suit against *M* to obtain possession. He got a decree, but did not execute it within three years. *M* died, and after his death and while his daughter (the plaintiff) was a minor, *B* took forcible possession of the land. Eight years afterwards the plaintiff attained her majority, and she then filed this suit to recover the land. The lower Court held that *B* having failed to execute his decree for possession was wrong in taking possession during the minority of the plaintiff without the intervention of a Court; that in so doing he was a trespasser; and that the plaintiff, as *M's* heir, was entitled to have possession given to her, until ousted in due course of law:—*Held* (reversing the decree), that, subject to the provision of s. 9 of the Specific Relief Act I of 1877, there is no reason for holding that in India the rightful owner dispossessing another is a trespasser, and may not rely for the support of his possession on the title vested in him, as he clearly may do by English law. BANDU *v.* NABA.

[I. L. R. 15 Bom. 238

POSSESSION—*continued.*

(3) ADVERSE POSSESSION.

4.—*Limitation—Possession under gift making valid title.*] Of two brothers of a Mitakshara family, the younger who had been born deaf and dumb was disqualified from inheriting, but the action of the elder to the younger was such as to recognize for some years that the younger had a joint interest in the family property, although it was found that there was no intention shown by the acts of the elder brother to waive the rights accruing to him in consequence of his brother's disqualification. The brothers died and also a daughter of the elder brother, who was their only descendant. This daughter had an only son, who died before her, after taking, however, the whole family estate under a gift made to him with his mother's assent by his maternal grandfather in 1867. In 1882 the plaintiff, a collateral relation, sued the widow of the donee to obtain the estate of the younger of the brothers. The widow made title under the gift to her deceased husband, followed by his possession, and hers afterwards, since the date of the gift. Upon the facts found, the suit was held to be barred by limitation. LALA MUDDUN GOPAL LAL *v.* KHIKHINDA KOER.

[I. L. R. 18 Calc. 341
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5.—*Equity of redemption—Mortgage—Limitation.*] In 1845 the plaintiff's grandfather *A* mortgaged the house in dispute to *D* with possession. *A* died in 1849, leaving him surviving his daughter *K* (the plaintiff's mother), and a daughter-in-law *N*, the widow of his predeceased adopted son. In 1856 the mortgagee *D* brought a suit on his mortgage against *N* and obtained a decree against her, directing (*inter alia*) a sale of the house in the event of the non-payment of the mortgage-debt. *N* in consequence sold the house in the same year (1856) to *R*, and paid off the mortgagee, who thereupon at her instance gave up the house to *R*. He held possession from 1856 to 1884. In 1881 the defendant *P* obtained a a decree against *R* for Rs. 2,000. In execution of this decree the house was sold, and *P* bought it himself, and obtained possession on 17th January 1884. While that suit was pending, the plaintiff *T*, the grandson of *A*, brought a suit (No. 247 of 1881) against the son of *D* (the original mortgagee), and *R* to redeem the mortgage of 1845 and recover possession. The plaintiff obtained a decree against *D's* son for redemption and proceeded to execute the decree. He was obstructed by *R's* son, who, however, in a suit (No. 205 of 1882) was found to have no right to the house. The present suit was brought in 1884 by the plaintiff to recover the house from the defendant:—*Held*, that the suit was barred. The defendant in 1884 purchased the house from *R*, who had bought it in 1856 from *N*. *R's* possession since that time had been adverse to the plaintiff. There can be adverse possession of the equity of redemption, and *N's* possession had been adverse up to the sale in 1856. PUTTAPPA *v.* TIMMAJI.

[I. L. R. 14 Bom. 176

POSSESSION—*concluded.*

(3) ADVERSE POSSESSION—*concluded.*

6.—*Occupation of vacant land—Encroachment—Temporary occupation—User.*] A small piece of land being of no present use to its owner and being convenient in many ways to his neighbour, the latter made use of it, in various ways, without objection for more than twelve years. A privy and sheds for cows, goats, fowls, &c., and a hut for a *ghariwallah*—all, however, structures of a flimsy and purely temporary character—were said to have been constructed and maintained for many years on the said piece of land. Such user, it was contended, amounted to adverse possession:—*Held*, that such user as this was insufficient to give a title to the land by adverse possession. User of this sort, under similar circumstances, is common in this country and excites no particular attention. It is neither intended to denote, or understood as denoting—on the one side or the other—a claim to the ownership of the land, and where this, and no more, is the case, it would be wrong to hold that a claim by adverse possession has been made out. FRAMJI CURSETJI *v.* GOCULDAS MADHOWJI.

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[I. L. R. 19 Calc. 646

(1) CASES WHICH MAGISTRATE MAY DECIDE AS TO POSSESSION.

1.—S. 145—"*Tangible immoveable property*"—*Standing crops.*] Standing crops are "tangible immoveable property" within the meaning of s. 145 of the Code of Criminal Proceedure. *Cheda Lal* v. *Mul Chand*, I. L. R. 14 All. 3, and *Madayya* v. *Yenkata*, I. L. R. 11 Mad. 193, followed. GANGA PRASAD *v.* NARAIN.

[I. L. R. 15 All. 394

(2) LIKELIHOOD OF BREACH OF THE PEACE.

2.—*Criminal Procedure Code* (*Act X of* 1882), *s.* 145—*Breach of the peace—Police report—Duties of Magistrate acting under s.* 145—*Record of grounds.*] Before instituting proceeding under s. 145 of the Code of Criminal Procedure, a Magistrate is bound to satisfy himself, on grounds which are reasonable, that a breach of the peace is imminent is regard to properties of

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

(2) LIKELIHOOD OF BREACH OF THE PEACE—*continued.*

the description specified in that section, and that a dispute likely to cause a breach of the peace exists concerning them; and the grounds stated by him must be such as to satisfy a Court of Revision before which such case may be brought by any of the parties concerned. Where a Magistrate, in consequence of the institution of various cases relating to breaches of the peace between the partizans of two rival zemindars had directed the police to enquire and report whether there were sufficient grounds for proceeding under s. 145, Criminal Procedure Code, and, having received a report which both suggested the necessity for such proceedings and set forth substantial reasons in support of the suggestion, made such report the foundation for the proceedings which he instituted, it was contended, among other things, that the Magistrate had not complied with the provisions of the Code in omitting to state the grounds of his being so satisfied of the imminence of a breach of the peace:—*Held*, that inasmuch as the Police report contained abundant evidence of the likelihood of a breach of the peace, it was sufficient, for the purpose of notice to the parties, for the Magistrate to cite it as the ground of his proceeding on which he was satisfied that a dispute within the terms of s. 145 existed, and that it would be open to the parties during the proceedings, if they disputed the necessity for them, to show before the Magistrate that no such dispute existed, or, if so advised, to move the Court of Revision to set aside the proceedings, on the ground that the Magistrate had proceeded on grounds which were not reasonable or which could not be held to be sufficient to satisfy him that such a dispute existed. DHANPUT SINGH *v.* CHATTERPUT SINGH.

[I. L. R. 20 Calc. 513

3.—*Criminal Procedure Code* (*Act X of* 1882) *ss.* 145, 537.—*Breach of the peace—Record of grounds for Magistrate taking proceedings under s.* 145—*Police report—Sessions Judge not empowered to order proceedings under s.* 145—*Invalidity of proceedings so instituted.*] To justify the initiation of proceedings under s. 145, Criminal Procedure Code, it is not sufficient that, in course of a trial, it should appear from the statement of a witness examined that a breach of the peace is likely to ensue in consequence of a dispute regarding land. Before taking action, the Magistrate is bound to be satisfied from a Police report or other information on this point, and he is also bound to make an order in writing stating the grounds of his being so satisfied, and this must be served on the parties to the dispute; for it is the intention of the law, not only that Magistrates should have sufficient grounds for proceeding under s. 145, but that they should inform the parties concerned of the grounds on which they are proceeding. A Sessions Judge is not competent to order a Magistrate to take action under s. 145. He should rather draw his attention to the nature of the dispute in the trial before him, so that the Magistrate may exercise his own discretion as to the necessity of proceedings. Proceedings so initiated, when there is nothing in the Police report or elsewhere to justify them, would be void, and s. 537, of the Criminal Procedure Code, would have no application. *Gour Mohan Majee* v. *Doollubh Majee*, 22 W. R. Cr. 81, dissented from; *Dhanput Singh* v. *Chatterput Singh*, I. L. R. 20 Calc. 513, followed. QUEEN-EMPRESS *v.* GOBIND CHANDRA DAS.

[I. L. R. 20 Calc. 520

(3) PARTIES TO PROCEEDINGS.

4.—*Criminal Procedure Code, s.* 145—*Parties claiming to be in possession of land, the subject of dispute, right of, to appear in proceedings.*] Before taking action under s. 145 of the Code of Criminal Procedure, the Magistrate is bound to be satisfied from a Police report or other information as to the likelihood of a breach of the peace, and he is also bound to make an order in writing stating the grounds of his being so satisfied, and this must be served on the parties to the dispute; for it is the intention of the law, not only that Magistrates should have sufficient grounds for proceeding under s. 145, but that they should inform the parties concerned of the grounds on which they are proceeding. Parties who, though not actually involved in the dispute, claim to be in possession of lands which are the subject of proceedings under s. 145, should not be shut out from giving evidence in support of their claims. To do so would undoubtedly occasion very serious prejudice and interference with any possession which they might be able to establish. QUEEN-EMPRESS *v.* GOBIND CHANDRA DAS.

[I. L. R. 20 Calc. 520

5.—*Criminal Procedure Code, s.* 145—*Parties concerned in proceedings.*] The words "parties concerned" in s. 145 of the Criminal Procedure Code do not necessarily mean only the persons who are disputing, but include also persons who are interested in, or claiming a right to, the property in dispute. RAM CHANDRA DAS *v.* MONOHUR ROY.

[I. L. R. 21 Calc. 29

6.—*Criminal Procedure Code* (*Act X of* 1882), *s.* 145—"*Parties concerned in dispute*"—*Death of one of original parties—Substitution of party without fresh proceeding under s.* 145—*Possession at time of institution of proceeding or at time of final order—Criminal Procedure Code, s.* 537.] In a proceeding under s. 145 of the Code of Criminal Procedure recorded on 27th April 1893, *A* and *B* were respectively made first and second parties, and were ordered to put in statements of their claims to the land in dispute, which they accordingly did. *B* died on 24th May 1893. In his statement filed on the 31st May, *A* disclaimed any interest in the land, but stated that his mother,

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*continued.*

(3) PARTIES TO PROCEEDINGS—*concluded.*

D K (who had been a party concerned in the dispute which led to the original proceeding), was the owner and in possession of it. On 1st June, *B S* applied to be substituted as a party in place of his father *B*. *D K* and *B S* were made parties without any fresh proceeding under s. 145 of the Code. The case was heard on 27th June and 7th July, and on 17th July the Magistrate found as regards the possession in favour of *D K*:—*Held*, by PETHERAM, C.J., and TREVELYAN, J. (RAMPINI, J., dissenting), that since the possession to be enquired into was the possession at the time of the initiation of the proceedings, the words "parties concerned in the dispute" meant parties concerned at that time: there was no power in such a proceeding to introduce parties who were not concerned in the original dispute. No order could therefore be made against *B S*, and the proceedings were bad as against him. *Per* RAMPINI, J.—The preliminary proceeding under s. 145 of the Code may, and in many cases must, partake of the character of a general citation to all the parties concerned in the dispute to appear, and it is not necessary for the Magistrate to confine his final order as to possession to the parties whom he may have named in the preliminary proceeding. The Magistrate had power to substitute the name of *B S* for that of his father without commencing the proceedings *de novo*. The alteration in s. 145 of Act X of 1882, the present Criminal Procedure Code, of the language of s. 530 of the old Code, Act X of 1872, implies that the Magistrate is to decide on the possession, not at the time of the initiation of the proceedings, but at the time of recording the evidence. If there was any err r in the proceedings, it was one cured by s. 537 of the Code. BECHU SHEIKH DEB KUMARI DASI.

[I. L. R. 21 Calc. 404

(4) EVIDENCE, MODE OF TAKING, WITNESSES, &c.

7.—*Criminal Procedure Code, s. 145—Issue of summons to witnesses—Magistrate, duty of—Process to enforce attendance of witnesses.*] Though in a proceeding under s. 145, the evidence is to be recorded as in a summons-case, it is the duty of the Magistrate to issue processes for the attendance of such witnesses as the parties may desire to call, unless he can show good reasons for not doing so. *Hurendro Narain Singh Chowdhry* v. *Bhobani Prea Baruani*, I. L. R. 11 Calc. 762, followed. RAM CHANDRA DAS *v.* MONOHUR ROY.

[I. L. R. 21 Calc. 29

(5) DECISION OF MAGISTRATE AS TO POSSESSION.

8.—*Criminal Procedure Code*, 1882, *s.* 145—*Magistrate to determine who was in possession at what time.*] Under s. 145 of the Code of Criminal Procedure (Act X of 1882) a Magistrate is required to decide which of the parties between whom a dispute exists is in possession of the subject of the dispute *at the time* when the Magistrate decides the question of possession, and not at any time *previous* thereto. IN THE MATTER OF HUCHAPA.

[I. L. R. 15 Bom. 152

9.—*Criminal Procedure Code, s.* 145—*Order for interim possession—Point of time at which possession is to be looked at in determining which party is entitled to an order under s.* 145.] The possession which a Magistrate acting under s. 145 of the Code of Civil Procedure has to find and support is possession at the time of the Magistrate's proceedings. Hence where a Magistrate decided a question of possession under s. 145 upon evidence taken six months previously:—*Held*, that such order was irregular and unsustainable. IN THE MATTER OF THE PETITION OF JAI LAL.

[I. L. R. 13 All. 362

See BECHU SHEIKH *v.* DEB KUMARI DASI.

Per PETHERAM, C. J., and TREVELYAN, J. (RAMPINI, J., dissenting).

[I. L. R. 21 Calc. 404

(6) ATTACHMENT OF PROPERTY.

10.—*Criminal Procedure Code, s.* 146—*Rights determinable by Revenue Court.*] Section 146 of the Code of Criminal Procedure does not give jurisdiction to pass an order of attachment in a dispute between parties whose rights regarding such dispute would have to be determined by a Revenue Court. GANGA PRASAD *v.* NARAIN.

[I. L. R. 15 All. 394

(7) STRIKING OFF PROCEEDINGS.

11.—*Striking off proceedings under s.* 145, *Code of Criminal Procedure, effect of—New proceeding.*] Proceedings under s. 145 of the Code of Criminal Procedure cannot be renewed after the dispute has been settled and an order has been made that the case be struck off. Under such circumstances a new proceeding would not be justified only on the materials upon which the proceeding, which was struck off, was based. TARINI CHARAN CHOWDHRY *v.* AMULYA RATAN ROY.

[I. L. R. 20 Calc. 867

(8) DISPUTES AS TO RIGHT OF WAY, WATER, &c.

12.—*Dispute about the right of performing worship and other religious rites in temples—Jurisdiction of Magistrates to interfere in cases where Civil Courts cannot grant relief—Procedure to be adopted where breach of the peace is apprehended—Right of suit.*] A Magistrate, First Class, made an order under s. 147 of the Criminal Procedure Code (Act X of 1882) forbidding certain persons from taking part in the worship and other religious ceremonies connected with certain temples. As to the right to perform these ceremonies, the High

POSSESSION, ORDER OF CRIMINAL COURT AS TO—*concluded.*

(8) DISPUTES AS TO RIGHT OF WAY WATER, &c.—*concluded.*

Court had previously held that Civil Courts could not determine trivial questions of mere dignity or privilege:—*Held*, that the matters in dispute not being adjudicable by a Civil Court, s. 147 did not give the Magistrate jurisdiction to forbid the persons named in the order from taking part in the ceremonies in question. *Held* also, that the order was bad in form, as it contained no restriction of the time during which it was to operate. *Held* further, that, in cases where a Magistrate apprehends a breach of the peace, his proper course is to act under the provisions of Chapter VIII of the Criminal Procedure Code (Act X of 1882). *In re* ATMARAM NARAYAN PARAB.

[I. L. R. 14 Bom. 25

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[I. L. R. 13 Mad. 242

——, s. 48.—*Secreting and fraudulently appropriating letters—Theft—Dishonest misappropriation—Penal Code (Act XLV of* 1860), *ss.* 378, 403.] The accused, being in the employ of Government in the Post Office Department, while assisting in the sorting of letters, secreted two letters with the intention of handing them to the delivery peon, and sharing with him certain moneys payable upon them. He was charged under the Indian Post Office Act, s. 48:—*Held* (1) that since the intention of the accused was not to prevent the delivery of the letters to the addressees, he was not guilty of the offence of secreting them within the meaning of that section; (2) that he was guilty of the offence of stealing and of fraudulently misappropriating the letters within the meaning of that section, and of the offence of theft and of attempt to commit dishonest misappropriation of property within the meaning of the Penal Code. QUEEN-EMPRESS *v.* VENKATASAMI.

[I. L. R. 14 Mad. 229

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[I. L. R. 13 Mad. 361

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[I. L. R. 13 Mad. 271

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[I. L. R. 13 Mad. 361

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——, Suit to enforce acceptance of—*concluded.*

See MADRAS RENT RECOVERY ACT, s. 51.

[I. L. R. 13 Mad. 361

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See STAMP ACT, SCH. I, ART. 50.

[I. L. R. 15 Mad. 386

—*Construction of power—Power to dispose of property does not give authority to pledge.*] A power-of-attorney authorized the holder "to dispose" of certain property in any way he thought fit:—*Held*, that the holder of such power had no authority to mortgage the property. A power-of-attorney must be construed strictly. MALUKCHAND BIN GYANMAL *v.* SHAN MOGHAN VARDRAJ.

[I. L. R. 14 Bom. 590

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[I. L. R. 16 Bom. 141

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[I. L. R. 18 Calc. 443, 539

See EXECUTION OF DECREE—STAY OF EXECUTION.
[I. L. R. 15 Bom. 536

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.
[I. L. R. 19 Calc. 334

See INSPECTION OF DOCUMENTS—CIVIL CASES.
[I. L. R. 15 Bom. 7

See INSOLVENT ACT, S. 73.
[I. L. R. 14 Bom. 189

See INTERROGATORIES.
[I. L. R. 17 Calc. 840
[I. L. R. 18 Calc. 420

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.
[I. L. R. 17 Calc. 337

PRACTICE—*continued.*

(1) CIVIL CASES—*continued.*

See LETTERS PATENT, HIGH COURT, CL. 15.
[I. L. R. 17 Calc. 66

See LUNATIC.
[I. L. R. 16 Bom. 132

See MAMLATDARS COURTS ACT.
[I. L. R. 14 Bom. 371

See OATHS ACT, SS. 10, 11.
[I. L. R. 13 All. 386

See PENSIONS ACT, S. 4.
[I. L. R. 17 Bom. 169

See CASES UNDER PRIVY COUNCIL, PRACTICE OF.

See RECEIVER.
[I. L. R. 14 Bom. 431

See REMAND—PROCEDURE ON REMAND.
[I. L. R. 17 Calc. 168

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL—PRACTICE AND PROCEDURE.

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE.

See SUMMONS, SERVICE OF.
[I. L. R. 19 Calc. 201

See WITHDRAWAL OF SUIT.
[I. L. R. 15 Bom. 160

(*a*) APPEAL.

1.—*Appeal by one plaintiff against another—Rival claimants put on the record as representatives of deceased plaintiff.*] In a suit for redemption one of the plaintiffs died. *A*, the adopted son, and *B*, the daughter, made separate applications under s. 365 of the Civil Procedure Code to be placed on the record. The Judge ordered them both to be put on the record and proceeded with the suit, and finding that *A's* adoption was proved, and that *B* was not legal heir of the deceased, he gave a decree for redemption in favour of *A*. *B* appealed making *A* alone respondent. The Appellate Court held that *B* and not *A* was heir of deceased and passed a decree in *B's* favour against *A*. On second appeal to the High Court, *held*, that the Judge had no power under s. 367 of the Code to admit on the record both rival claimants as legal representatives or adjudicate by his decree between their rival claims: and that the Appellate Court ought not to have allowed one plaintiff to appeal against another or to have decided the rights of different plaintiffs *inter se*. VITHU *v.* BHIMA.
[I. L. R. 15 Bom. 145

PRACTICE—*continued.*

(1) CIVIL CASES—*continued.*

(*a*) APPEAL—*concluded.*

2.—*Rules of Court, 30th November* 1889—*Memorandum of appeal, misdescription in—Appeal described as "first appeal from order" instead of "first appeal from decree."*] It is not a fatal objection to an appeal that the same is described in the memorandum as "First appeal from Order" being in reality a first appeal from a decree, it not being shown that the respondent was in any way prejudiced by such misdescription, or that by reason thereof an insufficient stamp was placed on the memorandum. *Kedar Nath* v. *Lalji Sahai*, I. L. R. 12 All. 61, *quoad* this point, distinguished. SANT LAL *v.* SRI KISHEN.

[I. L. R. 14 All. 221.

(*b*) APPLICATION AFTER REFUSAL.

3.—*Application to another Judge after refusal of application by one Judge of High Court—Review—Appeal.*] If an interlocutory order is wrongly refused by one Judge, the proper course is to apply for a review or to appeal from it; not to seek to obtain the order by resorting to another Judge, even though arguments should then be forthcoming which were not put before the first Judge. MOTIVAHU *v.* PREMVAHU.

[I. L. R. 16 Bom. 511

(*c*) APPLICATION BY PERSON NOT PARTY TO SUIT.

4.—*Lessors—Receiver.*] Case in which persons not parties to a suit in which a receiver had been appointed, were permitted to apply, by motion or notice in the suit, for the purpose of establishing their rights to obtain an order directing the receiver to make over to them certain properties of which he was holding possession after expiry of the lease under which those properties had been held by him, and which had been granted to his predecessor in title by certain persons through whom the applicants claimed as representatives. *Neate* v. *Pink*, 15 Sim. 450, as explained by FRY, J., in *Brocklebank* v. *East London Railway Company*, L. R. 12 Ch. D. 839, referred to. MAHOMED MEDHI GALISTANA *v.* ZOHARRA BEGUM.

[I. L. R. 17 Calc. 285

(*d*) COSTS.

5.—*Partition-proceedings—Form of order for costs—Order for execution on non-payment.*] Where one of the parties to a partition-suit bears all the costs of the proceedings subsequent to decree, and the other parties make default in payment to him of their respective shares of the costs, he is not entitled to embody in his order against them for payment an order for execution. He must first obtain an order for payment, and, if payment be not obtained, application for execution may be made. BROJOLALL SEN *v.* MOHENDRO NATH SEN.

[I. L. R. 18 Calc. 199

PRACTICE—*continued.*

(1) CIVIL CASES—*continued.*

(*e*) INSPECTION AND PRODUCTION OF DOCUMENTS.

6.—*Affidavit of documents—Sealing up immaterial parts—Sufficiency of affidavit.*] A plaintiff in his affidavit of documents objected to allowing inspection of such portions of certain account books as he stated did not contain entries relating to the matters in question in the suit, and claimed the right to seal up such portions. Upon that affidavit being filed, the defendant took out a summons to consider the sufficiency thereof. It was objected that this was not the proper mode of procedure, and that the defendant should take steps when inspection was refused:—*Held*, that though technically the better way of raising the question would have been to take out a summons for production, the course taken by the defendant might, if preferred, be adopted, and that he was entitled to an order that the plaintiff should make a better and further affidavit showing what parts of the documents he claimed to seal up, and the grounds upon which the claim was based. JADUB LOLL SHAW *v.* KANAI LOLL SHAW.

[I. L. R. 20 Calc. 587

(*f*) LETTERS OF ADMINISTRATION.

7.—*Petition by Administrator-General for letters of administration—Prayer for remission of Court-fees where estate is of small value—Rule of High Court*, 697—*Verification of petition—Administrator-General's Act (II of* 1874), *ss.* 12, 16, 17.] A petition by the Administrator-General for letters of administration containing a statement as to the value of the estate, followed by a prayer for the remission of Court-fees under Rule 697 of the Rules of the High Court (Belchambers' Rules and Orders, page 278), is sufficiently verified by the signature of the Administrator-General in accordance with s. 12 of Act II of 1874. The effect of that Act is to do away with the requirements of the rule in such a case, so far as it makes verification by affidavit necessary as to the value of the assets. IN THE GOODS OF MCCOMISKEY.

[I. L. R. 20 Calc. 879

(*g*) PAPER BOOKS.

8.—*Rules of Original Side, High Court—Appeal—Paper book, delivery of—Costs.*] When an appeal is filed, but no paper books are delivered by the appellant, the respondent is entitled without taking upon himself to deliver paper books, to have the appeal dismissed with costs. *Hurroosoondery Dossee* v. *Callypoddo Dutt*, 14 B. L. R. App. 11, not followed. KABULI *v.* BHULI.

[I. L. R. 17 Calc. 289

(*h*) RULINGS OF HIGH COURT.

9.—*Different rulings of different High Courts—Judge, what rulings to be followed by.*] Where there are different rulings of the different High Courts on a particular point, a Judge should follow

PRACTICE—*continued.*

(1) CIVIL CASES—*concluded.*

(*h*) RULINGS OF HIGH COURT—*concluded.*

the rulings of the High Court to which he is subordinate. SWAMIRAO NARAYAN DESHPANDE *v.* KASHINATH KRISHNA MUTALIK DESAI.

[I. L. R. 15 Bom. 419

BALAJI GANESH *v.* SAKHARAM PARASHRAM ANGAL.

[I. L. R. 17 Bom. 555

(*i*) SALE BY RECEIVER.

10.— *Obstruction of possession — Purchaser, rights of—Code of Civil Procedure (Act XIV of 1882), Ch. XIX, and s. 647—Costs.*] Practice of the Original Side of the Court followed in recognizing the right of a purchaser at a receiver's sale to obtain the assistance of the Court in obtaining possession under the provisions of the Court relating to sales in a suit. MINATOONNESSA BIBEE *v.* KHATOONNESSA BIBEE.

[I. L. R. 21 Calc. 479

(*j*) SALE BY REGISTRAR.

11.—*Purchase-money, payment of, into Court—Conditions of sale—Interest—Costs.*] Where the purchaser of a property at a Registrar's sale is out of time in paying into Court the balance of his purchase-money, the practice of the Original Side of the High Court is that payment of interest shall follow as a matter of course. But if there has been delay on the part of the party having the carriage of the proceedings, and if that party appears on the summons taken out by the purchaser for the purpose of paying into Court the balance of such purchase-money, he shall not be allowed his costs against the purchaser. KANYE LALL DASS *v.* SHAMA CHURN DAWN.

[I. L. R. 21 Calc. 566

(*k*) STAY OF PROCEEDINGS.

12.—*Dimissal of suit, effect of—Application to restrain receiver parting with funds, pending appeal — Power of Court.*] Under the Code of Civil Procedure, once a suit has been dismissed the Court dismissing it is *functus officio*, save that it may stay execution of its own decree or order for costs. An application therefore made to a Court of First Instance after dismissal of the suit, but before appeal filed, asking that the receiver may be restrained from parting with funds in his hands pending an appeal, cannot be granted. YAMIN-UD-DOWLAH *v.* AHMED ALI KHAN.

[I. L. R. 21 Calc. 561

(2) CRIMINAL CASES.

See APPEAL IN CRIMINAL CASES—PRACTICE AND PROCEDURE.

[I. L. R. 15 Mad. 137

[I. L. R. 13 All. 171

See COMMISSION—CRIMINAL CASES.

[I. L. R. 19 Calc. 113

PRACTICE—*concluded.*

(2) CRIMINAL CASES—*concluded.*

See CRIMINAL PROCEDURE CODE, S. 437.

[I. L. R. 12 All. 434

See LETTERS PATENT, HIGH COURT, CL. 36.

[I. L. R. 15 Bom. 452

See PARDANASHIN WOMEN.

[I. L. R. 12 All. 69

See REVISION — CRIMINAL CASES—ACQUITTALS.

[I. L. R. 15 Bom. 349

See RIGHT OF REPLY.

[I. L. R. 17 Calc. 930

[I. L. R. 14 Bom. 436

[I. L. R. 14 All. 212

See RIGHT TO BEGIN.

[I. L. R. 19 Calc. 380

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R. 15 Bom. 452

(*a*) PETITION FOR BAIL.

13.—*Petition for prisoner's admission to bail—Form of petition—Petition containing defamatory allegations against trying Magistrate and other public officers.*] When a prisoner applied to the High Court to be admitted to bail pending the disposal of his appeal, and the petition contained defamatory allegations, consisting (*inter alia*) of irrelevant attacks on the trying Magistrate and other officers in the service of the Government of India, the Court refused to allow the petition to be filed, and ordered it to be returned. IN RE DURANT.

[I. L. R. 15 Bom. 488

(*b*) REFERENCE TO HIGH COURT.

—*District Magistrate, competency of, to refer—Criminal Procedure Code (Act X of 1882), s. 438.*] When a case has been decided by the Sessions Judge on appeal from a Sub-divisional Magistrate, the District Magistrate should not refer the case to the High Court on the ground that the Sub-divisional Magistrate acted without jurisdiction. If he desires to move in the matter, he should proceed through the Legal Remembrancer. Observations of STRAIGHT, J., in *Queen-Empress* v. *Shere Singh*, I. L. R. 9 All. 362, referred to with approval. HIRAMAN DE *v.* RAM KUMAR AIN.

[I. L. R. 18 Calc. 186

PRE-EMPTION. *Col.*

1. Right of Pre-emption 855
2. Construction of Wajib-ul-arz ... 857

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

[I. L. R. 13 All. 119

PRE-EMPTION—*continued.*

See CASES UNDER MAHOMEDAN LAW—PRE-EMPTION.

See MALABAR LAW—MORTGAGE.

[I. L. R. 13 Mad. 490
[I. L. R. 15 Mad. 401, 480

——, Conditional decree for—

See APPEAL—ORDERS.

[I. L. R. 13 All. 189, 376

See DECREE—CONSTRUCTION OF DECREE—PRE-EMPTION.

[I. L. R. 14 All. 529

——, Suit for—

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 14 All. 405

See MORTGAGE—FORM OF MORTGAGES.

[I. L. R. 14 All. 195

(1) RIGHT OF PRE-EMPTION.

1.—*Right of pre-emption reserved in family partition-deed—Covenant by guardian of infant coparcener—Notice of covenant—Constructive notice—Transfer of Property Act, s. 3—Tender of purchase-money.*] The plaintiff and his step-mother, as guardian of her son, defendant 1, then an infant, made a division of the family property under a deed of partition by which (*inter alia*) a house was divided: the deed contained a covenant that if either coparcener should desire to sell his share of the house, the other should have the right of pre-emption. Defendant 1, without the knowledge of the plaintiff, sold his share of the house to defendant 3 for Rs. 130 under a sale-deed which referred to the deed of partition. The plaintiff now sued to enforce his right of pre-emption and in the course of the suit offered to pay Rs. 130:—*Held* (1) that the purchaser had constructive notice of the covenant in the deed of partition; (2) that the covenant was not invalid, and that it was unnecessary for the plaintiff to prove tender by him of the purchase-money before suit. RAJARAM *v.* KRISHNASAMI.

[I. L. R. 16 Mad. 301

2.—*Co-sharers—Wajib-ul-arz, construction of—Purchaser of isolated plot of land in mehal—Purchaser of sir land.*] The *wajib-ul-arz* of a village gave a right of pre-emption to "co-sharers in the *mehal*." One of the co-sharers brought a suit for pre-emption which the vendee-defendant resisted on the ground that he also was a co-sharer in the *mehal*, and the plaintiff had therefore no preferential right. This contention was based on a former purchase by the defendant under a deed of sale executed by a co-sharer; and comprising (i) an isolated plot of land in the *mehal*; (ii) *sir* lands in the *mehal*:—*Held* by the Full Bench that it being found that the vendee-defendant had already become a co-sharer in the *mehal* prior to the date of the purchase which was in question in the suit, the plaintiff had no preferential right

PRE-EMPTION—*continued.*

(1) RIGHT OF PRE-EMPTION—*continued.*

of pre-emption. *Per* MAHMOOD, J.—The decisions of the Full Bench in *Niamat Ali* v. *Asmat Bibi*, I. L. R. 7 All. 626, and *Sital Prasad* v. *Amtul Bibi*, I. L. R. 7 All. 633, have overruled *Hazari Lal* v. *Ugrah Rai*, Weekly Notes, 1884, p. 103, and *Rup Ram* v *Mangni*, Weekly Notes, 1886, p. 136. SAFDAR ALI *v.* DOST MUHAMMAD.

[I. L. R. 12 All. 426

3.—*Co-sharers—Pre-emption among co-sharers under the Oudh Laws Act (XVIII of 1876), ss. 9 to 13—Pre-emptor's right, as such, dependent on the intending vendor's right to sell—Accounts between co-sharers—Contribution, right to, for expenses of suit.*] Pre-emption, as declared in the Oudh Laws Act, 1876, is not applicable where the co-sharer claiming it denies the title of the co-sharer proposing to sell, alleges that the latter is not a co-sharer, and says that he himself is entitled to the property. One of two co-sharers, entitled to equal shares in an inheritance, having taken possession of the whole, was sued by the other for her share, with mesne profits from the date of the suit. To provide costs, the latter had sold to her co-plaintiffs the right to claim half of her share. The defences were—(1) relinquishment of her claim in favour of the defendant; (2) that the defendant had a right of pre-emption as to part, in consequence of the above transaction; (3) that the share in dispute was subject to a proportion of the debts due from the estate of the deceased, chargeable on the whole inheritance; and that if the plaintiffs should be held to be entitled to a decree, they should also be declared liable to pay, according to shares, their part of all the debts of the deceased liquidated by the defendant, as well as a proportion of money which he had expended, in good faith, in litigation for the protection of the inheritance. As to (1), the two Courts below concurred in the finding that no relinquishment had taken place. As to (2), it was pointed out that there had been no attempt to sell a share of the inheritance, but only to sell a share in a suit; and it was *held*, that the position taken up by the defendant was inconsistent with his claiming to pre-empt, so that pre-emption was inapplicable. As to (3), it was *held*, that, although the plaintiffs could not have a decree for mesne profits during the whole period of the defendant's possession, yet, if any account was to be taken of the defendant's payments, it must also be taken of his receipts; and it was held that the incidental benefit to the plaintiffs, who had not authorized the litigation, in which expense had been incurred, did not give rise to any implied contract on their part, or render them liable in equity for any portion of that expense. ABDUL WAHID KHAN *v.* SHALUKA BIBI.

[I. L. R. 21 Calc. 496

4.—*Co-sharers—N.-W. P. Land Revenue Act (XIX of 1873), ss. 166, 168, 188—N.-W. P. Rent Act (XII of 1881), s. 177—Interpretation of Statutes—Meaning of the terms "Patti" and "Patti of a mehal."*] The expression "*patti* of a *mehal*" as used in s. 188 of the North-Western

PRE-EMPTION—*continued.*

(1) RIGHT OF PRE-EMPTION—*concluded.*

Provinces Land-Revenue Act (XIX of 1873) means a division of a *mehal* distinct from the share of an individual co-sharer. The right of pre-emption, therefore, which is given by the above-named section is not exercisable on the sale merely of the share of an individual co-sharer not amounting to such a division of a *mehal*. Moreover, the provisions of s. 188 of Act XIX of 1873 do not apply to a sale under s. 168 of the same Act of land other than that in respect of which the arrears which it is sold to satisfy accrued. Hence, where the share of a co-sharer in an imperfect *pattidari* village, not being the land in respect of which the arrears of rent, for the satisfaction of which the said share is sold, are due, is sold under the provisions of s. 177 of the North-Western Provinces Rent Act (XII of 1881), no right of pre-emption can be claimed in respect of such sale. So *held* by EDGE, C. J., and YOUNG, J., MAHMOOD, J., *contra*. There being no statutory definition of the word *patti* that word must be taken in its ordinary acceptation, and in that acceptation it means the share of a *pattidar*, whether such share amounts to a definite division of a *mehal* or not. The exigencies of the law of pre-emption require that in s. 188 of Act XIX of 1873, the word *patti* should be construed in its broader signification as equivalent to any share of a *pattidar*. The words of s. 168, which provide that land sold under that section is to be proceeded against "as if it were the land on account of which the revenue is due under the provisions of this Act," render the incidents of sales under s. 166, including pre-emption applicable to sales under s. 168, with the exception that in such case only the defaulter's interest in the land sold passes by the sale. Hence a right of pre-emption would accrue under s. 188 in respect of the compulsory sale of any share of a co-sharer though such share did not amount to a *patti* in the sense of a definite division of a *mehal*. BAIJ NATH *v.* SITAL SINGH.

[I. L. R. 13 All. 224

(2) CONSTRUCTION OF WAJIB-UL-ARZ.

5.—*Custom—Mahomedan law.*] In a suit for pre-emption based on a *wajib-ul-arz* the material words of the *wajib-ul-arz* under the heading of "Custom for pre-emption" were as follows:—"At the time a proprietary share is transferred a right of purchase will vest, first, in a co-sharer of the same family, and then in the other co-sharers of the village in preference to a stranger, provided that the same price is paid by the co-sharer as is offered by the stranger:"—*Held*, that these words were intended to define a special custom of pre-emption, and did not merely mean that the custom of pre-emption according to the Mahomedan law was to be followed. *Ram Prasad* v. *Abdul Karim*, I. L. R. 9 All. 513, distinguished. JASODA NAND *v.* KANDHAIYA LAL.

[I. L. R. 13 All. 373

6.—*Wajib-ul-arz not signed by lambardar or co-sharers.*] Where a *wajib-ul-arz* was not signed by the *lambardar* or by any of the co-sharers of the village for which it was framed, but was found to have been in existence wtihout having been questioned by any of the parties who might have been affected thereby for a period of some thirteen years:—*Held*, that the *wajib-ul-arz* might be taken as *primâ facie* evidence of the custom of the village for which it was framed. The said *wajib-ul-arz* contained a clause relative to pre-emptive rights to the following effect:—"When any *muafidar* in the *patti* desires to transfer his share, then first a shareholder in the *patti* takes it, and if he does not take it, then another man who desires to take it takes it." *Held*, that this clause was declaratory of the village custom, and that it was not intended thereby to adopt the Mahomedan law of pre-emption. RUSTAM ALI KHAN *v.* ABBASI BEGAM.

[I. L. R. 13 All. 407

7.—*Conditional sale.*] The pre-emptional rights of the parties to a deed of conditional-sale cannot be affected by a *wazib-ul-urz* prepared subsequently to the execution of the deed of conditional sale, but prior to the sale becoming absolute, they not being parties to the *wajib-ul-arz*, and the *wajib-ul-arz* not apparently indicating any pre-existing custom of pre-emption in the village. *Raghubir Singh* v. *Nandu Singh*, Weekly Notes, 1891, p. 134, distinguished. BECHAN RAI *v.* NAND KISHORE RAI.

[I. L. R. 14 All. 341

PRELIMINARY INQUIRY.

See PRESIDENCY MAGISTRATE.

[I. L. R. 16 Bom. 159

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R. 20 Calc. 349

See SANCTION TO PROSECUTION—NATURE, FORM, AND SUFFICIENCY, OF SANCTION.

[I. L. R. 20 Calc. 474
[I. L. R. 15 All. 392

See SANCTION TO PROSECUTION—POWER TO GRANT SANCTION.

[I. L. R. 19 Calc. 345

PRESCRIPTION.

Col.
1. Easements 858
(*a*) Right of way 858
(*b*) Rights concerning water ... 859

See CASES UNDER LIMITATION ACT, 1877, S. 26.

(1) EASEMENTS.

(*a*) RIGHT OF WAY.

1.—*Landlord and tenant—Act V of* 1882 (*Easements Act*)—*Act VIII of* 1891—*Application of Act—Suit before Act VIII of* 1891 *came into force.* There is nothing in Act VIII of 1891, which ex-

PRESCRIPTION—*continued.*

(1) EASEMENTS—*continued.*

(*a*) RIGHT OF WAY—*concluded.*

tended the Easements Act to the North-Western Provinces, to compel the Court to apply the Easements Act (V of 1882) to a suit commenced before Act VIII of 1891 came into force. A tenant cannot as against his landlord acquire by prescription an easement of way in favour of the land occupied by him as tenant over other land belonging to his landlord. So *held* by the Full Bench, *Gayford* v. *Moffatt*, L. R. 4 Ch. App. 133, referred to. UDIT SINGH *v.* KASHI RAM.

[I. L. R. 14 All. 185

2.—*Prescriptive right of the defendant to have branches of his trees overhanging the plaintiff's land—Right of the defendant to go on to the plaintiff's land to collect the fruit of the trees distinct from and not accessory to the right to have the branches overhanging.*] The defendant having acquired a prescriptive right to have the branches of his trees overhanging the plaintiff's land, the lower Courts held that he had a right to go on to the plaintiff's land for the purpose of gathering the fruit of trees, on the ground that the prescriptive right to have the branches of his trees overhanging the plaintiff's land carried with it an "accessory" right to enjoy the profits of the branches in the best way possible:—*Held* (reversing the lower Court's decree), that the right to go on the plaintiff's land to pick the fruit off the branches was perfectly distinct from the prescriptive right to have the branches overhanging the land, and could not be said to be accessory to the latter right in the sense of being within the limits of that right. PARSOTAM GHELA *v.* GANDRAP FATELAL GOKULDAS.

[I. L. R. 17 Bom. 745

(*b*) RIGHTS CONCERNING WATER.

3.—*Easements Act* (*V of* 1882), *s.* 24—*Rights accessory to an easement.*] The plaintiff having in a previous suit obtained a decree declaring his right of having the roof of his house projecting over the defendants' land, and discharging water thereon, now sued for a declaration of his right to go upon the defendants' land for the purpose of repairing the roof:—*Held*, that the plaintiff was entitled to the right claimed as being, accessory to the easement already established, but that it should be exercised only once a year and after notice to the defendants. HAYAGREEVA *v.* SAMI.

[I. L. R. 15 Mad. 286

4.—*Easements apparent and continuous—Easements of necessity—Implied grant.*] *A* and *B* were originally in joint possession of certain land. They divided this land in 1865, and, ten years later, built at their joint expense a partition wall between their respective portions, leaving a drain in the wall for the passage of water from *A's* to *B's* land. In 1885 *B* stopped the flow of water by this drain. *A* thereupon sued for an injunction to restrain *B* from causing the obstruction. The Court of First Instance decreed the claim. The

PRESCRIPTION—*concluded.*

(1) EASEMENTS—*concluded.*

(*b*) RIGHTS CONCERNING WATER—*concluded.*

Appellate Court rejected the claim, on the ground that there was no express agreement between the parties that the water should be carried off by the drain in the wall:—*Held*, on second appeal to the High Court, that *A* would be entitled to the easement claimed by him if he could show either that it was necessary for the enjoyment of his share of the property, or that it was apparent and continuous and necessary for enjoying the share as it was enjoyed when the partition took effect. PURSHOTAM SAKHARAM *v.* DURGOJI TUKARAM.

[I. L. R. 14 Bom. 452

PRESIDENCY MAGISTRATE.

——, Duty of—

See REVISION—CRIMINAL CASES—COMMITMENTS.

[I. L. R. 16 Bom. 580

——, Reference to High Court by—

See RIGHT TO BEGIN.

[I. L. R. 19 Calc. 380

—*Jurisdiction—Coroners Act* (*IV of* 1871), *s.* 25—*Committal to the High Court by a Coroner—Presidency Magistrate's power to inquire into a case committed by the Coroner.*] A Presidency Magistrate is competent to hold a preliminary inquiry into the case of an accused person who has been committed to the High Court by the Coroner under s. 25 of Act IV of 1871. QUEEN-EMPRESS *v.* MAHOMED RAJUDIN.

[I. L. R. 16 Bom. 159

PRESIDENCY TOWNS SMALL CAUSE COURT ACT (XV OF 1882.)

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS.

——, s. 23.

See CLAIM TO ATTACHED PROPERTY.

[1. L. R. 18 Calc. 296

——, s. 37.

See CIVIL PROCEDURE CODE, s. 108.

[I. L. R. 21 Calc. 269

See CLAIM TO ATTACHED PROPERTY.

[I. L. R. 18 Calc. 296

See LIMITATION ACT, 1877, ART. 164.

[I. L. R. 17 Bom. 507

PRESUMPTION.

See ARMS ACT, s. 19.

[I. L. R. 15 All. 27

See DEBTOR AND CREDITOR.

[I. L. R. 19 Calc. 174

PRESUMPTION—*concluded.*

See LANDLORD AND TENANT—NATURE OF TENANCY.

[I. L. R. 16 Mad. 131

[I. L. R. 14 Bom. 392.

See MESNE PROFITS—MODE OF ASSESSMENT AND CALCULATION.

[I. L. R. 18 Calc. 540

See ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.

[I. L. R. 19 Calc. 660

See OWNERSHIP, PRESUMPTION OF.

[I. L. R. 15 Mad. 101

[I. L. R. 16 Bom. 547

See RIGHT OF WAY.

[I. L. R. 15 All. 270

See STOLEN PROPERTY, OFFENCES RELATING TO.

[I. L. R. 21 Calc. 328

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[I. L. R. 15 All. 147

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[I. L. R. 13 Mad. 406

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PRINCIPAL AND AGENT.

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[I. L. R. 16 Mad. 285

(1) AUTHORITY OF AGENTS.

1.—*Suit brought by agent for principal—Dismissal of suit brought by agent in his principal's name—Amendment of plaint—Court, power of.*] A Court in which a suit is brought on behalf of one person, through the agency of another, is entitled to inquire as to the agent's authority. A suit for arrears of rent was brought by an agent, professing to act under authority from his principal. The plaintiff, after instituting the suit in his own name as agent, obtained an order from the Court granting him leave to amend the plaint by substituting the name of his principal as plaintiff, suing through him, an amendment which the defendant resisted, disputing the authority of the agent:—*Held*, that the Court in allowing it did not decide that the agent had authority: that remained to be proved; and as it was not proved, the suit failed. NAM NARAIN SINGH *v.* RAGHU NATH SAHAI.

[I. L. R. 19 Calc. 678

[L. R. 19 I. A. 135

2.—*Right of agent to sue—Husband and wife—Suit by wife's constituted attorney—Lunatic—Act XXXV of 1858.*] *D* sued in the Mamlatdar's Court, as *A's* constituted attorney, for an injunction restraining the defendants from causing any obstruction to his possession of certain lands. The land belonged to *A's* husband, who was alleged to be a lunatic; but there was no adjudication of his lunacy, nor was *A* appointed a manager of his estate under Act XXXV of 1858:—*Held*, that *D* had no right to sue. *A* not having been appointed a manager of her husband's estate, had herself no right to sue in respect of a disturbance of her husband's possession. She could not, therefore, authorize her agent to sue on her behalf. NEMAVA *v.* DEVANDRAPPA.

[I. L. R. 15 Bom. 177

(2) LIABILITY OF AGENTS.

3.—*Contract Act (IX of 1872), s. 230—Undisclosed principal.*] A broker gave to one *G* the following sold note:—"Sold this day by order and for account of E. E. Gubboy, to my principal, G. P. Notes for Rs. 2,00,000 (two lakhs) at Rs. 98-11. (Sd.) A. T. A., Broker." This note was endorsed—"A. T. A., for principal." In a suit by *G* against the broker for failure to take

PRINCIPAL AND AGENT—*continued.*

(2) LIABILITY OF AGENTS—*concluded.*

delivery:—*Held*, that there was nothing in this contract to rebut the personal liability of the broker. GUBBOY *v.* AVETOOM.

[I. L. R. 17 Calc. 449

4.—*Suit by principal against agent to recover money received and not accounted for—Termination of agency—Act IX of* 1872 (*Contract Act*), *ss.* 201, 218]. Where an agent for the sale of goods receives the price thereof, the agency does not terminate, with reference to ss. 201 and 218 of the Contract Act (IX of 1872), until he has paid the price to the principal; and a suit by the principal to recover the price is within time if brought within three years from the date of a demand for an account of such price. The agency does not terminate immediately on the sale of the goods. It does not terminate at the time when the plaintiff obtained knowledge of the defendant's breach of duty. BABU RAM *v.* RAM DAYAL.

[I. L. R. 12 All. 541

(3) COMMISSION AGENTS.

5.—*Contract Act* (*IX of* 1872), *ss.* 215, 216—*Unauthorised profits of agent—Evidence Act* (*I of* 1872), *s.* 92—*Contemporaneous oral agreement—Account-sales.*] The plaintiffs, a firm of merchants, entered into an agreement (which was reduced to writing) with the defendants, who were dealers in coffee and other produce, to the following effect, *viz.*, that all consignments of produce, which the defendants might make to Europe, should be made through the plaintiffs' firm; that the plaintiffs should receive a commission of 1 per cent. for themselves and 2½ per cent. for their agents at the port of consigment; that the plaintiffs should make certain advances to the defendants against the produce; and that the sums advanced should be repaid with interest "at such rates as may be fixed at the various dates of such loans, it being agreed that such interest is to be regulated by the then prevailing rate at the office of the Bank of Madras at Tellicherry." The written agreement was silent as to the mode of sale, rate of exchange, and other matters connected with the business; but it was at the same time further agreed orally that the sales of the defendants' produce were to be made under the directions and at the discretion of the plaintiffs. Business was carried on on the footing of the above agreements for eighteen months, during which period the plaintiffs furnished to the defendants copies of the account-sales for the consignments made through them, and they were accepted without objection by the defendants. The business resulted in the defendants becoming indebted to the plaintiffs; and about nine months after the date of the above-mentioned agreement the defendants executed in favour of the plaintiffs a mortgage in which the then amount of their indebtedness was recited. The defendants became further indebted to the plaintiffs, and the plaintiffs having furnished them with an account of the transactions between them now sued to recover the balance due. The defendants admitted the correctness of the debit side of the account, but

PRINCIPAL AND AGENTS—*continued.*

(3) COMMISSION AGENTS—*continued.*

denied in general terms that of the credit side. Evidence was given by the plaintiffs of the receipt of the account-sales in the ordinary course of business and of the delivery of copies to the defendants from time to time, and they were filed as exhibits without further proof. It appeared that in the account the defendants were charged on account of local exchange at a rate higher than that actually paid to the Bank, with which the plaintiffs had made a special arrangement without reference to the contract with the defendants. It also appeared that the plaintiffs, under an arrangement made with their agents at the ports of consignment, had received from them about 1 per cent. on the various coatsignments by way of return commission, and that this arrangement had not been communicated to the defendants:—*Held* (1) that the account-salestwere *primâ facie* proof of the transactions to which they related; (2) that evidence of the contemporaneous oral agreement was admissible; (3) that the defendants were not entitled to the benefit of the special arrangement between the plaintiffs and the Bank; (4) that the plaintiffs were liable to the defendants for the amount received by them as return commission. MAYEN *v.* ALSTON.

[I. L. R. 16 Mad. 238

6.—*Principal and factor—Consignment for sale—Advance by factor on consignment—Right of factor to sell goods consigned to him for sale below the limit of price prescribed by consignor.*] In January 1889 an agreement was made between the plaintiffs and the defendant which provided that the defendant in Bombay was to act for the plaintiffs "in influencing consignments of produce" to the care of the plaintiffs in London. Such produce was to be sold by the plaintiffs in London for a certain commission and brokerage. One of the terms of the agreement was that the business in England was to be worked entirely in the defendant's name, and the defendant was to "undertake to guarantee the plaintiffs free of all loss in connection with the said consignments and to guarantee the payment of redrafts, &c." On the 25th January 1889 the defendant consigned 435 packages of cloves to the plaintiffs in London and drew against the consignment a draft for £2,100 on the plaintiffs. In his consignment letter the defendant stated that the consignment was from his constituent *C K*, but that as Rs. 30,000 had been advanced to him, the consignment was shipped in the defendant's name. The letter continued: "The cost is 9½*d.* per pound, but he expects more, and *not to be sold under the above rate.*" The sum drawn against the cloves (£2,100) was £400 in excess of their value, and on receipt of the consignment letter on the 11th February 1889, the plaintiffs at once telegraphed to the defendant to remit by cable £400 against overdraft against cloves. On the next day the defendant replied by telegraph: "I will remit you by outgoing mail." The plaintiffs accepted and paid the draft for £2,100 drawn against the cloves. The price of cloves in the London market

PRINCIPAL AND AGENT—*concluded.*

(3) COMMISSION AGENTS—*concluded.*

fell rapidly. The defendant from time to time lowered the limit of price, but not to such an extent as to allow of a sale being effected. The lowest limit named by him was 6*d.* per pound on the 31st October 1889. In December 1889 the market price was only 5*d.* per pound, and the deficit owing to the plaintiffs was £1,300. The plaintiffs presented bills to the defendant for this balance, but they were refused. On the 5th February 1890, after due notice to the defendant, the 435 bales of cloves were sold, 20 of them at 4¾*d.* per pound and 415 at 4⅝*d.* The balance due to the plaintiffs in respect of this consignment after allowing for the proceeds of sale was £1,432-15-0. This sum was part of the amount for which the present suit was brought. The defendant contended that the plaintiffs were not justified in selling the cloves below the price limited, *viz.*, 6*d.* per pound, and claimed to be credited with £329-1-8, which was the difference between the amount actually realized by the sale and the amount which would have been obtained if the cloves had been sold at the prescribed price :—*Held*, by FARRAN, J., and by the Court of Appeal, on the evidence (1) that the plaintiffs had accepted the consignment and had advanced money against it on condition of being kept in funds in case a deficit should arise, owing to a falling market, and that the defendant acquiesced in that condition ; (2) that the plaintiffs had throughout claimed the right to sell if the condition was not observed, and that the defendant inferentially admitted the right claimed by the plaintiffs. The conclusion to be drawn was that the business was conducted on that basis, and that when the condition was broken the plaintiffs' right to sell arose according to the course of business, notwithstanding the limit of price imposed by the defendant. *Per* SARGENT, C. J. :—The result of the authorities is to show that where a factor for sale, who has made advances, claims the right to sell, *invito domino*, the question is whether there was an agreement between the parties, either express or to be inferred, from the general course of business or from the circumstances attending the particular consignment, that the factor should under any and what circumstances have the power to sell against the wish of the owner of the goods. The *onus* of proving such agreement lies on the factor who has made the advances, *Per* FARRAN, J. :—On the whole, the authorities warrant the inference that where goods are consigned to a foreign merchant as security for an advance, albeit he may be a factor entrusted with the sale of goods on commission, and where by reason of the fall in the market or other causes his security is declining in value, and becoming insufficient, such foreign merchant is invested with a power of sale over the goods after due notice to his principal, although the latter may place a limit on their sale, and desire to hold them on, if the principal do not put his factor in funds to make up the deficit so caused. JAFFERBHOY LUDHABHOY CHATTOO *v.* CHARLESWORTH.

[I. L. R. 17 Bom. 520

PRINCIPAL AND SURETY.

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2. Discharge of Surety 866

(1) RIGHTS AND LIABILITIES OF SURETY.

1.—*Creditor and surety — Right of surety to benefit of securities held by creditor—Surety for a part of debt due by principal debtor to creditor —Payment by surety of that part—Right of surety to benefit of securities does not arise until whole of debt paid off—Contract Act (IX of* 1872), *s.* 141.] In August 1889, one *K* was indebted to the Bank of Bengal (the defendants) in the sum of Rs. 3,15,000. The Bank pressed for security or payment, and, on the 5th September 1889, *K* executed, in favour of the Bank, two mortgages of certain immoveable properties, the value of which was estimated to be Rs. 1,35,000. The mortgages, though stamped to secure this amount only, were drawn to cover the whole liability of *K* to the Bank, and recited that he had become largely indebted to the Bank on certain bills, &c., and had agreed to give security in respect of such indebtedness as was thereafter expressed, and they contained covenants by *K* to pay to the Bank all sums of money then due, or thereafter to become due, by him in respect of such bills, &c. Besides the said two mortgages, the Bank obtained other securities for a further sum of Rs, 55,000, making the total sum secured Rs. 1,90,000, and leaving a balance of Rs. 1,25,000 unsecured. Under these circumstances the Bank refused to renew certain bills of *K's* which fell due on the 9th September 1889, unless further security were given, and accordingly the plaintiff became surety for *K* for the sum of Rs. 1,25,000. This sum he was subsequently obliged to pay, and he then brought this suit claiming to share in the proceeds of the mortgages held as security by the Bank. He contended that these mortgages were given as security for the whole debt (*viz.*, Rs. 3,15,000) ; that of this debt he, as surety, had paid a part, *viz.*, Rs. 1,25,000 to the Bank ; and that he was, therefore, to that extent entitled to stand in the place of the Bank and to receive a share of the proceeds of the said securities proportioned to the sum which he had paid :—*Held*, that the plaintiff was not entitled to the benefit of the securities held by the Bank until the whole of the debt due to the Bank by *K* was paid. A surety, who has paid the debt which he has guaranteed, has a right to the securities held by the creditor, because as between the principal debtor and surety the principal is under an obligation to indemnify the surety. The equity between the creditor and the surety is that the creditor shall not do anything to deprive the surety of that right. But the creditor's right to hold his securities until his whole debt is paid is paramount to the surety's claim upon such securities, which only arises when the creditor's claim against such securities has been satisfied. GOVERDHANDAS GOCULDAS TEJPAL *v.* BANK OF BENGAL.

[I. L. R. 15 Bom. 48

(2) DISCHARGE OF SURETY.

2.—*Negotiable Instruments Act (XXVI of* 1881), *ss.* 37, 39, 66—*Contract Act, s.* 135—*Accommodation maker, discharge of—Presentment of promissory note.*] Suit by the endorsee against the

PRINCIPAL AND SURETY—*continued.*

(2) DISCHARGE OF SURETY—*continued.*

maker of a promissory note, dated 9th August 1886. The plaintiff was aware that the note was made by the defendant for the accommodation of the acceptor, Watson & Co., with whom the plaintiff had large dealings. On the 4th August 1887, Watson & Co. executed in favour of the plaintiff and another creditor a mortgage of certain property to secure the amount then due by Watson & Co., including the amount due to the plaintiff on the promissory note: the mortgage contained a personal covenant by Watson & Co. to pay the sums due, together with interest, on the 4th August 1888; and the mortgagees practically took over the whole business of the mortgagor, and it was intended that they should work it for his benefit up to that date. The promissory note fell due in June 1887, but was not presented to the defendant for payment:—*Held*, that the plaintiff, by accepting the mortgage, promised to give time to Watson & Co., and thus rendered it impossible for him to sue Watson & Co. had the defendant as surety called on him to do so, and that the defendant was accordingly discharged. *Pogose* v. *Bank of Bengal*, I. L. R. 3 Calc. 174, distinguished. *Semble*:—The maker of a promissory note is not discharged by the holder's failure to present it at due date. RAMAKISTNAYYA *v.* KASSIM.

[I. L. R. 13 Mad. 172

3.—*Contract Act, s.* 134—*Omission of creditor to serve summons on the principal debtor—Civil Procedure Code* (*Act XIV of* 1882), *s.* 99*A*—*Practice.*] In a suit against the principal debtor and the surety, the omission of the creditor to effect service of summons on the principal debtor does not discharge the surety from his liability, under s. 134 of the Contract Act (IX of 1872). ALLI *v.* MAHOMED.

[I. L. R. 14 Bom. 267

4.—*Guarantee—Concealment of material fact from surety—Contract Act* (*IX of* 1872), *ss.* 133, 143—*Further duties imposed on person for whom defendants were sureties.*] In August 1881 the defendants became sureties to the Bank of Bengal for the due discharge by one *B* of the duties and liabilities of the office of *khajanchi* of the Bank in Bombay. *B* was the second clerk in the Bank, and it was arranged between him and the Agent that he should still continue to fill that office. He did so after his appointment as *khajanchi*, and he received the same salary as before in respect of it. In 1889 defalcations, for which as *khajanchi* he was responsible, were discovered to the extent of Rs. 1,42,142. The Bank obtained a decree against him for the total amount, and they sued the defendants as sureties. The defendants pleaded that they were not liable, inasmuch as the Bank had appointed *B* to perform the duties of second clerk, in addition to those of *khajanchi*, without their knowledge and consent, and they contended that such appointment amounted

PRINCIPAL AND SURETY—*concluded.*

(2) DISCHARGE OF SURETY—*concluded.*

to a subsequent variation of the contract, which discharged them, under s. 133 of the Contract Act, as to transactions subsequent to the variance. The Court was of opinion that inasmuch as the evidence showed that *B* was second clerk at the time of his appointment as *khajanchi* and continued afterwards to fill that office by arrangement between him and the Agent of the Bank, the question was not whether there had been a subsequent variation of the contract, but whether, as the surety-bond was silent as to this part of the arrangement between the Bank and *B*, and it was made (as the defendants alleged) without their knowledge and consent, they were discharged from liability on the ground that a material circumstance had been concealed from them:—*Held*, that the defendants were not discharged from liability. The expression "keeping silence" in s. 143 of the Contract Act clearly implies intentional concealment as distinguished from mere non-disclosure. The withholding must be fraudulent, as necessarily is the case when a material circumstance is intentionally concealed. In this case there was not the slightest reason to suppose that there had been any intentional concealment by the Bank of the fact that *B* was to continue to fill the office of second clerk, or that, if the defendants had been informed of it, it would have in the least degree affected their readiness to make themselves liable for his faithful discharge of the duties of *khajanchi*. The evidence showed that the duties of the two offices were perfectly distinct, and, therefore, even if *B* had been re-appointed to the office of second clerk after his appointment to the office of *khajanchi* (as it was contended for the defendants was the proper way of regarding what occurred), there would have been no material alteration in the duties of *khajanchi* which would have relieved the defendants from their obligation as sureties, but merely the addition of a new office which would not affect the sureties', liability, unless, indeed, the surety-bond contained an agreement that the principal should not undertake any other business. It was also contended for the defendants that they were discharged from liability, inasmuch as in the year 1883 the names on certain bills discounted with the Bank were found to be forged. The Bank then make a claim upon *B* in respect thereof, and he repudiated his liability. The defendants contended, on the authority of *Phillips* v. *Foxall*, L. R. 7 Q. B., 666, that it was the duty of the Bank to have informed them of this occurrence at that time. *Held* (distinguishing *Phillips* v. *Foxall*), that it could not have been assumed that *B* was infallible in detecting forgeries, and the guarantee given by the defendants was not, therefore, founded on that assumption, and therefore fair dealing could not require that the Bank should at once have informed the sureties as soon as *B* had proved to be fallible. BALKRISHNA KIRTIKAR *v.* BANK OF BENGAL.

[I. L. R. 15 Bom. 585

PRIORITY OF DEEDS.

See MORTGAGE—MARSHALLING.

[I. L. R. 13 Mad. 383
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See REGISTRATION ACT, s. 48.

[I. L. R. 13 Mad. 324

See REGISTRATION ACT, s. 50.

[I. L. R. 13 All. 288
[I. L. R. 16 Mad. 148

See VENDOR AND PURCHASER—NOTICE.

[I. L. R. 17 Bom. 741

PRIVATE DEFENCE, RIGHT OF.

See RIOTING.

[I. L. R. 13 Mad. 148

—Commencement and extent of the right—Penal Code, ss. 99, 105*—Information of offence to be committed.*] The third clause of s. 99 of the Penal Code must be read with the first clause of s. 105. The right of private defence of property commences when a reasonable apprehension of danger to the property commences. Before such apprehension commences, the owner of the property is not called upon to apply for protection to the public authorities. The apprehension which justifies a recourse to the authorities ought to be based on some information of a definite kind as to the time and place of the danger actually threatened. The accused No. 1 received information, one evening, that the complainants intended to go on his land on the following day and uproot the *juvari* seed sown in it. At about 3 o'clock next morning he was informed that the complainants had entered on his land and were ploughing up the seed. Thereupon he at once proceeded to the spot, followed by the other accused, and remonstrated with the complainants. The complainants, without paying any attention to his remonstrances, commenced an attack on the accused. In the fight which ensued, both sides received serious injuries, and the leader of the complainants' party was killed. The accused were thereupon charged and convicted, under ss. 304, 114, 325, and 323 of the Penal Code, of culpable homicide not amounting to murder, of voluntarily causing grievous hurt, and of causing hurt:—*Held*, reversing the convictions, that the complainants being the aggressors, the accused had, under the circumstances, the right of private defence, both of person and of property, and that, in the exercise of this right, they did not inflict more harm than was necessary. *Held*, also, that the accused were not bound to act on the information received on the previous evening and seek the protection of the public authorities, as they had no reason to apprehend a night-attack on their property. QUEEN-EMPRESS *v.* NARSANG PATHABHAI.

[I. L. R. 14 Bom. 441

PRIVILEGE.

See INSPECTION OF DOCUMENTS.

[I. L. R. 15 Bom. 7

See LIBEL.

[I. L. R. 14 Bom. 97

PRIVILEGED COMMUNICATION.

See DEFAMATION.

[I. L. R. 15 Mad. 214, 414
[I. L. R. 15 Bom. 351
[I. L. R. 16 Mad. 235

—Privilege—Communication by a servant of a company to one of his subordinates as to another subordinate — Defamation.] In an action for damages for defamation brought by a brewer recently emp'oyed by a brewery company against the local manager of the company, the defamatory statements complained of were contained in letter written by the defendant to the directors of the company, and also in a letter written to another brewer in the employ of the company, in which he said that the plaintiff "had failed most utterly, and I have been compelled to inform him that you will take the position of senior brewer at the brewery:"—*Held*, that all these statements were in the nature of privileged communications. LEISHMAN *v.* HOLLAND.

[I. L. R. 14 Mad. 51

PRIVY COUNCIL.

See CASES UNDER APPEAL TO PRIVY COUNCIL.

See CASES UNDER EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

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2.	Death of Party to Appeal	870
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4.	Rehearing	872

(1) SUBSTITUTION OF APPELLANT.

1.—*Procedure—Security for costs—Terms as to costs.*] An appellant, after the transmission of his appeal to England, obtained leave in the High Court to withdraw it. The appeal involved the rights of a minor, party to the suit, whose mother and guardian obtained an order for her to be substituted for the withdrawing appellant, on the terms that she should give security to the satisfaction of the High Court for costs already ordered, and should undertake to abide by any order as to general costs. GAUR MOHUN CHAKERBATI *v.* TARASUNDERI DEBI.

[I. L. R. 17 Calc. 693

(2) DEATH OF PARTY TO APPEAL.

2.—*Death of respondent after hearing and before judgment — Addition of parties.*] Where the respondent, a widow and heir, died after the case had been argued, and in consequence the inheritance ceased to be represented in the suit, and there was

PRIVY COUNCIL, PRACTICE OF—*contd.*

(2) DEATH OF PARTY TO APPEAL—*concld.*

no one in whose presence certain necessary accounts could properly be taken against the widow, the Judicial Committee after adding the heir thought it unnecessary to delay the decree, but let it rest with the plaintiff, the appellant, to apply to the Court below to add the necessary parties. SURENDRO KESHUB ROY *v.* DOORGASOONDERY DOSSEE.

[I. L. R 19 Calc. 513
[L. R. 19 I. A. 108

(3) CONCURRENT JUDGMENTS ON FACTS.

3.—*Findings of fact—Concurrent findings by two Courts.*] The usual course of not disturbing concurrent findings of fact may be followed, notwithstanding that a part of the evidence in the suit has not been considered by the lower Court, when both Courts have arrived at the same result. In this case, however, the whole of the evidence having been brought to their notice, the Judicial Committee expressed their opinion that the Appellate Court below could not have decided otherwise than as it had decided. RAM LAL *v.* MEHDI HUSAIN.

[I. L. R. 17 Calc. 882
[L. R. 17 I. A. 70

4.—*Hindu Law—Adoption—Necessity of there being gift and acceptance of the adopted child.*] The Court of First Instance and the Appellate Court, after observing fully upon the evidence, found that, although a ceremony of adoption had taken place, there had not, in fact, been a giving and taking of the child. There being no reason for departing from the ordinary course, where two Courts have concurred, the above finding was accepted; and it was thereupon *held* that there had been no adoption. BIRESWAR MUKERJI *v.* ARDHA CHANDER ROY; SHIB CHANDER ROY *v.* GOBIND MOHINI.

[I. L. R. 19 Calc. 452
[L. R. 19 I. A. 101

5.—Practice of abiding by concurrent decisions on fact followed. ASGHAR REZA *v.* MEHDI HOSSEIN.

[I. L. R. 20 Calc. 560
[L. R. 20 I. A. 38

6.—*Inferences of fact — Concurrent findings by two Courts below, not influenced by precisely the same considerations, upon the same evidence.*] It cannot detract from the weight of concurrent findings of fact that different Courts, in arriving at the same result upon the same evidence, have not been influenced by precisely the same considerations: a difference of opinion to that extent is only calculated to suggest that the evidence, whatever view be taken of it, necessarily leads to one and the same inference. NILMONI SINGH DEO *v.* KIRTI CHUNDER CHOWDHRY.

[I. L. R. 20 Calc. 847
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PRIVY COUNCIL, PRACTICE OF—*concld.*

(4) RE-HEARING.

7.—*Refusal of re-hearing — "Res noviter."*] The judgment of the Judicial Committee reported to, and confirmed by, Her Majesty in Council cannot be reopened only for the reason that new evidence is forthcoming. *In re Appa Rao*, I. L. R. 10 Mad. 73, referred to. YARLAGADDU DURGA *v.* MALLIKARJUNA.

[I. L. R. 14 Mad. 439

PROBATE. *Col.*

1. Jurisdiction of District Court ... 872
2. To whom Granted 872
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[I. L. R. 21 Calc. 539

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[I. L. R. 19 Calc. 48

——, Necessity for—

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[I. L. R. 15 Bom. 657

——, Refusal to allow party to oppose—

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[I. L. R. 21 Calc. 539

——, Stamp duty on—

See COURT-FEES ACT, SCH. I, ART. 11.

[I. L. R. 20 Calc. 575

(1) JURISDICTION OF DISTRICT COURT.

1.—*Application for probate where on appeal from District Court the High Court finds that the will was proved.*] Where on appeal from the District Court it was found by the High Court that a will was proved:—*Held*, that a subsequent application for probate should be made to the District Court. BAYABAI *v.* SARASVATIBAI.

[I. L. R. 17 Bom. 686

(2) TO WHOM GRANTED.

2.—*Universal legatee not entitled to probate—Letters of administration with the will annexed—Probate and Administration Act (V of 1881), s. 19.*] A universal legatee is not entitled to probate, but only to letters of administration with the will annexed. *In the goods of Radhika Mahan Sett*, 7 B. L. R. 563, not followed. IN THE GOODS OF SHOSHEE BHUSAN BANNERJEE.

[I. L. R. 19 Calc. 582

PROBATE—*continued.*

(2) TO WHOM GRANTED—*concluded.*

3.—*Executor by implication—Administration with will annexed—Succession Act* (*X of* 1865), *s.* 182.] A Hindu died leaving a will whereby he bequeathed all his property whatever (including debts) to two of his sons, who now applied for probate of the will on the ground that they were appointed executors by implication:—*Held*, that the sons were not entitled to probate of the will. EX-PARTE VITTAL DOSS.

[I. L. R. 15 Mad. 360

4.—*Probate and Administration Act* (*V of* 1881)—*Discretion of Court as to refusal to grant probate—Executor.*] Where, on application for probate by a person appointed executor by the will, the genuineness of the will is not disputed, and the applicant is a person not legally incapable, the Court acting under the Probate and Administration Act (V of 1881) has no discretion to refuse probate on the ground that in its opinion the applicant is not a fit and proper person to be appointed executor. HARA COOMAR SIRCAR *v.* DOORGAMONI DASI.

[I. L. R. 21 Calc. 195

(3) PROOF OF WILL.

5.—*Genuineness of will—Appearance and signatures—Probate, application for—Probate and Administration Act* (*V of* 1881).] The High Court considering it to have been proved by the evidence that the alleged testator was incapable, by reason of illness, of signing the will as firmly as it purported to be signed, found that the signatures were not genuine, and reversed the decree of the first Court which had granted probate. On appeal there was no view of the signatures, neither party having applied to have the originals transmitted, or to have photographs taken of them. But their Lordships found that the evidence did not warrant the conclusion that on the day on which the will purported to have been executed, the testator physically and mentally, was unable to execute it; but that there was sufficient evidence to establish the genuineness of the will and the capacity of the testator to make it, and that the evidence for the defence was not sufficient to destroy the petitioner's case on either of these points. BAMASUNDARI DEBI *v.* TARASUNDARI DEBI.

[I. L. R. 19 Calc. 65
[L. R. 18 I. A. 132

(4) OPPOSITION TO, AND REVOCATION OF, GRANT.

6.—*Person having interest in estate—Person disputing right of testator to deal with property as his own—Probate and Administration Act* (*V of* 1881), *s.* 69.] A person not claiming any of the property of the testator, but disputing the right of the testator to deal with certain property as his own, has not such an interest in the estate of the testator as entitles him to come in and oppose the grant of probate. *Kamona Soondury Dassee* v. *Hurro Lall Shaha*, I. L. R. 8 Calc. 570, dissented from; *Behary Lall Sandyal* v. *Juggo Mohun Gossain*, I. L. R. 4 Calc. 1: 2 C. L. R. 422; and *Nanhu Koer* v. *Somirun Thakur*, 8 C. L. R. 287, followed in principle. ABHIRAM DASS *v.* GOPAL DASS.

[I. L. R. 17 Calc. 48

PROBATE—*continued.*

(4) OPPOSITION TO, AND REVOCATION OF, GRANT—*concluded.*

7.—*Person having interest in estate—Mortgagees—Application to revoke or withdraw probate.*] Mortgagees of the estate of a deceased person have an interest in such estate entitling them to intervene and be heard in opposition to an application made to withdraw probate. KASHI CHUNDRA DEB *v.* GOPI KRISHNA DEB.

[I. L. R. 19 Calc. 48

8.—*Person claiming interest in the estate of the deceased—Interest sufficient to support application to revoke probate—Revocation of probate—Probate and Administration Act* (*V of* 1881), *s.* 69.] Where the heir *ab intestato* of a deceased person has entered into a contract to sell the property of the deceased, and has received the greater part of the consideration-money, the purchaser from such heir is a person claiming to have an interest in the estate of the deceased within the meaning of s. 69 of the Probate and Administration Act, and is entitled, upon a will being set up and proved at variance with his interest, to apply for revocation of the probate of the will so set up. *Komollochun Dutt* v. *Nilrutton Mundle*, I. L. R. 4 Calc. 360, followed. MUDDUN MOHUN SIRCAR *v.* KALI CHURN DEY.

[I. L. R. 20 Calc. 37

9.—*Revocation of probate—"Just cause" for revocation—Probate and Administration Act* (*V of* 1881), *s.* 50.] The mere absence of a special citation in proceedings in which probate of a will is granted is not, where the person to whom a citation has not been issued is otherwise aware of the proceedings, a "just cause" for revocation of probate as making the proceedings substantially defective within the meaning of s. 50 of the Probate Act, even where such person is a minor. NISTARINY DABYA *v.* BRAHMOMOYI DABYA.

[I. L. R. 18 Calc. 45

(5) EFFECT OF PROBATE.

10.—*Succession Act* (*X of* 1865), *s.* 187—*Hindu Wills Act* (*XXI of* 1870), *s.* 2—*Probate and Administration Act* (*V of* 1881), *Chs. II to XII—Probate or administration to wills of Hindus executed before* 1*st September* 1870.] Section 187 of the Succession Act, which, by s. 2 of the Hindu Wills Act, was made applicable to wills executed subsequent to the 1st September 1870, has not been incorporated in Act V of 1881; and although it is competent to a Court to grant probate or letters of administration in respect of wills antecedent to the 1st September 1870, still it is not obligatory upon executors or persons claiming probate or administration to obtain such probate or letters of administration before they can establish their

PROBATE—*concluded.*

(5) EFFECT OF PROBATE—*concluded.*

right in respect to any property subject to such wills. KRISHNA KINKUR ROY *v.* PANCHURAM MUNDUL.

[I. L. R. 17 Calc 272

PROBATE AND ADMINISTRATION ACT (V OF 1881).

See CASES UNDER LETTERS OF ADMINISTRATION.

See CASES UNDER PROBATE.

———, s. 19.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 20 Calc. 888

———, s. 50.

See WILL—EXECUTION.

[I. L. R. 21 Calc. 1

———, s. 53.

See APPEAL—PROBATE.

[I. L. R. 21 Calc. 539

———, s. 59.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 20 Calc. 888

———, s. 62.

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 16 Mad. 380

———, s. 86.

See APPEAL—PROBATE.

[I. L. R. 17 Calc. 48
[I. L. R. 21 Calc 539

PROCEDURE.

See under the heading in respect of which the particular procedure is required.

PROCESS.

See COURT-FEES ACT, S. 20.

[I. L. R. 17 Calc. 281

———, Non-payment of fees for—

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[I. L. R. 16 Mad. 234

PROCESS, SERVICE OF.

—*Civil Procedure Code*, 1882, *ss.* 79, 80, 82—*Service of notice of appeal—Respondent's refusal to sign acknowledgment of service—Ex-parte decree against respondent.*] Where a respondent refused to sign the acknowledgment of service endorsed on the original notice of the appeal, and the serving officer, instead of affixing a copy of the notice on the outer door of the house in which the respondent was residing, returned the notice to the Court with an affidavit stating the respondent's refusal to sign the acknowledgment, and the Court passed an *ex-parte* decree against the

PROCESS, SERVICE OF—*concluded.*

respondent:—*Held* that under the circumstances there was no due service of the notice, and that the appeal was wrongly decided *ex-parte*. MARUTI *v.* VITHU.

[I. L. R. 16 Bom. 117

PRODUCTION OF DOCUMENTS.

See CONTEMPT OF COURT—PENAL CODE, S. 175.

[I. L. R. 13 Mad. 24

See PRACTICE—CIVIL CASES—INSPECTION AND PRODUCTION OF DOCUMENTS.

[I. L. R. 20 Calc. 587

PROMISSORY NOTE. *Col.*

1. Form 876
2. Execution 877
3. Assignment of, and Suits on ... 877

See PLEADER—REMUNERATION.

[I. L. R. 14 Mad. 63

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY,

[I. L. R. 13 Mad. 172

See STAMP ACT, S. 3, CL. 10.

[I. L. R. 13 All. 66

———, Suit on.

See PLEADER—REMUNERATION.

[I. L. R. 16 Mad. 278

(1) FORM.

1.—*Promissory note payable to "bearer on demand"—Note payable whenever 'dhani' (i.e. the owner) may demand — Dhani not equivalent to "bearer"—Not a negotiable instrument—Paper Currency Act (XX of 1882), s. 25—Negotiable Instruments Act (XXVI of 1881), ss. 4 and 13.*] The plaintiffs brought a suit on an alleged promissory note of the defendants for Rs. 2,125. The note was in *Gujarati*, in the form of an account, on a loose sheet of paper. After reciting that the defendant had borrowed the said sum of Rs. 2,125 on personal security, and that interest was to run thereon at a specified rate, the document continued as follows:—"The same (*i.e.*, the sum borrowed with interest) are payable whenever *dhani* (the owner or lender) may demand payment thereof." The defendant contended that the note in question was in form one payable to "bearer on demand," and as such illegal and void, as being in contravention of the provisions of s. 25 of the Paper Currency Act (XX of 1882):—*Held*, that *dhani* was not in the ordinary or the commercial language of the Bombay Presidency equivalent to "bearer" in the sense that word was employed in the Paper Currency and Negotiable Instruments Acts, and that the document in question was not, therefore, a negotiable instrument, nor obnoxious to the provisions of the former Act, and there was no objection to a suit founded upon it. JETHA PARKHA *v.* RAMCHANDRA VITHOBA.

[I. L. R. 16 Bom. 689

PROMISSORY NOTE—*concluded.*

(1) FORM—*concluded.*

2.—*Contract Act (IX of 1872), s. 2—Proposal for a loan—Stamp Act, s. 3.*] A letter, reciting a request for a loan, calling on the addressee to pay the amount to the bearer of the letter, and continuing "this sum I shall repay with interest .....and get back this letter: I request you will not neglect to pay the amount on the strength of this letter," is a promissory note and not a mere proposal for a loan. CHANNAMMA *v.* AYYANNA.

[I. L. R. 16 Mad. 283

(2) EXECUTION.

3.—*Evidence as to execution—Probabilities.*] Case in which it was held on the evidence and a discussion of surrounding probabilities that the first Court was in error in finding that a promissory note sued on had been executed by the defendant. HURRICHURN BOSE *v.* MONINDRA NATH GHOSE.

[L. R. 19 I. A. 4

(3) ASSIGNMENT OF, AND SUITS ON.

4.—*Bill of exchange—Endorser of note or bill, rights of—Right to securities deposited of endorser paying the holder of note or bill—Surety.*] The same rule is applicable to the endorser of a promissory note that applies to the endorser of a bill-of-exchange, that, if he pays the holder of it, he is entitled to the benefit of the securities given by the maker in the one case, the acceptor in the other, which the holder has in his hands at the time of the payment, and upon which he has no claim except for the note or bill. *Duncan Fox & Co.* v. *North and South Wales Bank*, L. R. 6 Ap. Cas. 1, referred to. Promissory notes made by an agent, acting for himself and for his principal, were secured by the deposit of title-deeds of property, belonging to the principal, in the hands of a Bank which discounted the notes, and the latter were paid at maturity by an endorser:—*Held*, that the endorser was entitled to a transfer of the deeds to him as security, without further assent from the owner. *Held*, also, that he was entitled to have them transferred to him on the ground that, as a fact, the agent, acting within the principal's authority, had agreed that, in consideration of his paying the amount of the notes to the holder, he should have this security, the Bank assenting. AGA AHMED ISPAHANI *v.* CRISP.

[I. L. R. 19 Calc. 242

[L. R. 19 I. A. 24

5.—*Liability of maker, discharge of—Failure to present note at due date.*] *Semble*:—The maker of a promissory note is not discharged by the holder's failure to present it at due date. RAMAKISTNAYYA *v.* KASSIM.

[I. L. R. 13 Mad. 172

PROPERTY, DESCRIPTION OF.

See REGISTRATION ACT, s. 21.

[I. L. R. 18 Calc. 556

[I. L. R. 17 Bom. 94

PROPERTY SEIZED BY POLICE.

See CRIMINAL PROCEDURE CODE, s. 523.

[I. L. R. 17 Bom. 748

PROPRIETORS OF LAND, DELIMITATION OF LAND OF ADJOINING.

See LAND REGISTRATION ACT (BENGAL), s. 7.

[I. L. R. 17 Calc. 304

PROSTITUTION.

See PENAL CODE, s. 372.

[I. L. R. 21 Calc. 97

PROVINCIAL SMALL CAUSE COURT ACT (IX OF 1887).

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL.

See CASES UNDER SPECIAL APPEAL—SMALL CAUSE COURT SUITS.

——, s. 16.

See REFERENCE TO HIGH COURT—CIVIL CASES.

[I. L. R. 21 Calc. 249

——, s. 24.

See APPEAL—ORDERS.

[I. L. R. 15 Mad. 89

——, s. 25.

See JUDGMENT—CIVIL CASES.

[I. L. R. 13 All. 533

See LETTERS PATENT, HIGH COURT, N.-W. P.

[I. L. R. 15 All. 373

See REVISION — CIVIL CASES — SMALL CAUSE COURT CASES.

[I. L. R. 13 All. 277

[I. L. R. 15 All. 139

——, s. 33.

See SUBORDINATE JUDGE, JURISDICTION OF.

[I. L. R. 14 Bom. 371

——, s. 35.

See TRANSFER OF CIVIL CASE.

[I. L. R. 13 All. 324

——, Sch. II, cl. 6.

See ATTACHMENT — SUBJECTS OF ATTACHMENT — PROPERTY AND INTEREST IN PROPERTY OF VARIOUS KINDS.

[I. L. R. 14 All. 30

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880).

See LIMITATION ACT, 1877, s. 14.

[I. L. R. 20 Calc. 264

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880)—*contd.*

———, s. 2.—*Bengal Act VII of* 1868, *s.* 8—*Certificate of sale—Evidence of sufficiency of service of notice of sale—Act XI of* 1859.] Section 2 of the Public Demands Recovery Act (Bengal Act VII of 1880), which enacts that "that Act, so far as is consistent with the tenor thereof, shall be construed as one with Act XI of 1859 and Bengal Act VII of 1868" does not extend the effect of s. 8 of Bengal Act VII of 1868 to a sale-certificate granted under s. 19 of Bengal Act VII of 1880, so as to make such a certificate conclusive evidence of the sufficiency of the service of the notices of sale under the last-named Act. PULIN CHANDRA ROY *v.* AKBAR HOSSEIN.

[I. L. R. 21 Calc. 350

———, ss. 7, 8.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE — IRREGULARITY.

[I. L. R. 18 Calc. 125

———, s. 8 (b), cl. 3, and s. 10.—*Certificate, suit to set aside—Amount not "due."*] Where rent was payable jointly to certain wards of Court, and another proprietor whose guardianship under the Court of Wards had ceased, and the Collector issued a certificate, under Bengal Act VII of 1880, for a proportionate share of the rent due to the wards, *held*, that there being no right at law to claim any separate share of the rent, there was no sum "due," and therefore under s. 8 of the Act, the certificate was invalid and must be cancelled. GIRJANATH ROY CHOWDHRY *v.* RAM NARAIN DAS.

[I. L. R. 20 Calc. 264

———, s. 10.

See CESS.

[I. L. R. 19 Calc. 783

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE — IRREGULARITY.

[I. L. R. 18 Calc. 125

———, s. 10.—*Act XI of* 1859, *ss.* 5, 17—*Sale for arrears of revenue, Notification of—Attachment under certificate, Procedure.*] Where a notice under s. 10 of Bengal Act VII of 1880 was served, and a certificate issued by the Collector for default of payment of road cess of a revenue-paying estate, and the Government revenue being in arrears, no notification under s. 5 of Act XI of 1859 was issued, and the estate was subsequently sold for arrears of Government revenue:—*Held*, that the sale was valid, and ss. 5 and 17 of Act XI of 1859 did not apply, the certificate issued by the Collector being not an attachment as contemplated by s 5. *Ram Narain Koer* v. *Mahabir Pershad Singh*, I. L. R. 13 Calc. 208, referred to. RIPOO MURDAN SINGH *v.* RAM REKHA LAL.

[I. L. R. 20 Calc. 325

———, s. 19.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R. 18 Calc. 125

PUBLIC DEMANDS RECOVERY ACT (BENGAL ACT VII OF 1880)—*concld.*

———, ss. 21 and 22.—*Sale in execution of a certificate under the Act — Procedure—Satisfied certificate—Act XI of* 1859.] The Collector having received a report from the Tehsildar that arrears of road cess (Bengal Act IX of 1880) were due in respect of villages, took proceedings purporting to be in pursuance of Bengal Act VII of 1880. In the certificate of unpaid demand, the names of the persons described as debtors were those not of the present proprietors, but of former proprietors, and the copy and notice were addressed to them:—*Held* by the High Court that the procedure laid down by Bengal Act VII of 1880 must be strictly followed; and it is, therefore, absolutely incumbent on the Courts, when considering the validity of sales under that Act, to rigidly require an exact compliance with the formalities prescribed therein by the Legislature. Where a certificate is issued in respect of a demand under the Act, upon payment of such demand, it becomes the duty of the Collector, under s. 22, to enter satisfaction upon the certificate, and also in the register kept under s. 21. A sale in execution of a satisfied certificate, or of a certificate not duly made under the Act, is absolutely void. *Abdul Hye* v *Nawab Raj*, B. L. R. Sup. Vol. 911; and *Lala Mobaruk Lal* v. *The Secretary of State for India*, I. L. R. 11 Calc. 200, followed; *Mohan Ram Jha* v. *Baboo Shib Dutt Singh*, 8 B. L. R. 235, referred to. *Semble*:— Demands in respect of cess under Bengal Act VII of 1880 are not on the same footing as revenue demands to which Act XI of 1859 applies, and, therefore, the procedure prescribed by Act XI of 1859 for the recovery of the latter is not applicable to the recovery of the former. GUJRAJ SAHAI *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 17 Calc. 414

Held, on appeal by the Privy Council, affirming the decision of the High Court that, even if the certificate and the proceedings following it had been duly authenticated, and intimated to the present proprietor, which had not been the case, they could not affect his right of property in the villages, inasmuch as the Act only authorized the attachment and sale of the property of the persons who are described as debtors. This of itself was a ground for cancelling the sale. Their Lordships also concurred in the view taken by the High Court that there was no evidence showing that the certificate had been duly signed; and were of opinion that the High Court had rightly found payment of the arrears before the sale. MAHOMED ABDUL HAI *v.* GUJRAJ SAHAI.

[I. L. R. 20 Calc. 826
[L. R. 20 I. A. 70

PUBLIC DOCUMENT.

See EVIDENCE ACT, s. 74.

[I. L. R. 18 Calc. 534

PUBLIC DUTIES, ENFORCEMENT OF.

See HIGH COURT, JURISDICTION OF—HIGH COURT, CALCUTTA—CIVIL.

[I. L. R. 17 Calc. 329

PUBLIC HIGHWAY.

See BENCH OF MAGISTRATES.
[I. L. R. 13 Mad. 142

See BENGAL MUNICIPAL ACT, 1864, s. 10.
[I. L. R. 20 Calc. 732

See BENGAL MUNICIPAL ACT, 1884, s. 217.
[I. L. R. 17 Calc. 684

See DECLARATORY DECREE, SUIT FOR—ORDERS OF CRIMINAL COURTS.
[I. L. R. 17 Bom. 293

See RES JUDICATA — ESTOPPEL BY JUDGMENT.
[I. L. R. 20 Calc. 732

——, Obstruction to—

See MADRAS POLICE ACT, 1888.
[I. L. R. 14 Mad. 223

See RIGHT OF SUIT—OBSTRUCTION TO PUBLIC HIGHWAY.
[I. L. R. 14 Mad. 177

PUBLIC NUISANCE.

See NUISANCE — PUBLIC NUISANCE UNDER PENAL CODE.
[I. L. R. 14 Mad. 364
[I. L. R. 20 Calc. 665

PUBLIC OFFICER.

——, Offer of bribe to—

See ACCOMPLICE.
[I. L. R. 14 Bom. 331

—*Civil Procedure Code*, 1882, *s.* 424—*Notice of suit—Talukdari settlement officer managing estate under Act XXI of* 1881 — *Broach and Kaira Encumbered Estates Act.*] The plaintiff sued for a declaration that he was entitled to succeed, on his father death, to a *talukdari* estate, to the exclusion of defendant 1, who he alleged was a suppositious child set up by his stepmother to defeat the plaintiff's right of inheritance. It appeared that defendant 1 had obtained a decree against the plaintiff's father establishing his legitimacy and declaring him entitled to receive maintenance out of the estate in question. In accordance with that decree, the *talukdari* settlement officer (defendant 2), who was manager of the estates under the Broach and Kaira Encumbered Estates Act (XXI of 1881) paid defendant 1 an allowance of Rs. 200 a month on account of his maintenance, which allowance the plaintiff alleged was illegal and wrongful. The defendants contended that the suit was bad, because notice had not been given to the *talukdari* settlement officer as required by s. 424 of the Civil Procedure Code (Act XIV of 1882):—*Held*, following *Shahebzadee* v. *Fergusson*, I. L. R. 7 Calc. 499, and *Bhau Balapa* v. *Nana*, I. L. R. 13 Bom. 343, that, although the *talukdari* settlement officer

PUBLIC OFFICER—*concluded.*

acting as manager under Act XXI of 1881 was a "public officer," yet the suit was maintainable without giving the *talukdari* settlement officer the notice required by s. 424 of the Code of Civil Procedure, as it was not a suit arising out of acts done by him in his official capacity. SARDARSINGJI *v.* GANPATSINGJI.
[I. L. R. 14 Bom. 395

PUBLIC POLICY.

——, Assignment against—

See CHAMPERTY.
[I. L. R. 14 Bom. 72

——, Agreement against—

See CHAMPERTY.
[I. L. R. 15 All. 352

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY
[I. L. R. 13 Mad. 83
[I. L. R. 16 Bom. 673

——, Custom against—

See HINDU LAW — CUSTOM — ENDOWMENT.
[I. L. R. 14 Bom. 90

See HINDU LAW—MARRIAGE—VALIDITY OR OTHERWISE OF MARRIAGE.
[I. L. R. 17 Bom. 400

PUBLIC SERVANT.

See EVIDENCE ACT, s. 74.
[I. L. R. 18 Calc. 534

See PENAL CODE, s. 186.
[I. L. R. 18 Calc. 518

——, Disobedience to order of—

See PENAL CODE, s. 188.
[I. L. R. 13 All. 577

——, Giving false information to.

See PENAL CODE, s. 182.
[I. L. R. 13 All. 351
[I. L. R. 15 All. 336

——, Obstructing—

See PENAL CODE, s. 152.
[I. L. R. 19 Calc. 105

See PENAL CODE, s. 183.
[I. L. R. 15 Bom. 564

See PENAL CODE, s. 186.
[I. L. R. 15 Mad. 93, 221

——, Offences against lawful authority of—

See CONTEMPT OF COURT—PENAL CODE, s. 175.
[I. L. R. 13 Mad. 24

PUBLIC SERVANT—*concluded.*

——, Prosecution of—

See SANCTION TO PROSECUTION—NATURE, FORM AND SUFFICIENCY OF SANCTION.

[I. L. R. 16 Mad. 468

1.—*Municipal Inspector — District Municipalities Act (Madras Act IV of* 1884), *s.* 41.] A Municipal Inspector is a public servant within the meaning of s. 41 of the Madras District Municipalities Act. QUEEN-EMPRESS *v.* RAMASAMI.

[I. L. R. 13 Mad. 131

2.—*Penal Code, s.* 166 — *Madras Regulation XXIX of* 1802, *s.* 12—*Duties of zemindari karnam accounts.*] A zemindari *karnam* is a public servant and is bound by law to produce accounts to the proprietor or farmer of a zemindari. SUBRAMANAYA *v.* SOMASUNDARA.

[I. L. R. 15 Mad. 127

PUBLIC WORSHIP.

See MAHOMEDAN LAW—CUSTOM.

[I. L. R. 18 Calc. 448

PUBLICATION.

See DEFAMATION.

[I. L. R. 15 Bom. 286

PURCHASE-MONEY.

——, Deposit of—

See SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

[I. L. R. 18 Calc. 242

——, Payment of, into Court.

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

[I. L. R. 21 Calc. 566

——, Suit for—

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF—

[I. L. R. 13 Mad. 158

——, Suit for refund of—

See LIMITATION ACT, 1877, ART. 97.

[I. L. R. 19 Calc. 123

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 16 Mad. 361

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

[I. L. R. 13 All. 383
[I. L. R. 16 Mad. 361

——, Tender of—

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[I. L. R. 16 Mad. 301

PURCHASERS.

See CASES UNDER BENAMI TRANSACTION—CERTIFED PURCHASERS.

See CASES UNDER HINDU LAW—JOINT-FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE AND RIGHTS OF PURCHASERS.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENERS.

[I. L. R. 13 Mad. 275
[I. L. R. 15 Mad. 234
[I. L. R. 15 Bom. 234

See HINDU LAW—PARTITION—SHARES ON PARTITION—PURCHASERS.

[I. L. R. 14 Mad. 408

See CASES UNDER MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

See CASES UNDER SALE FOR ARREARS OF RENT—RIGHTS AND LIABILITIES OF PURCHASERS.

See CASES UNDER SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, RIGHTS OF.

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

See CASES UNDER VENDOR AND PURCHASER.

QUARRIES.

See LAND ACQUISITION ACT, SS. 24 AND 25.

[I. L. R. 16 Mad. 369

QUESTION OF FACT.

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 53.

[I. L. R. 15 Bom. 180

See OWNERSHIP, PRESUMPTION OF.

[I. L. R. 15 Mad. 101

See CASES UNDER PRIVY COUNCIL, PRACTICE OF—CONCURRENT JUDGMENTS ON FACT.

See REVISION—CRIMINAL CASES—QUESTIONS OF FACT.

[I. L. R. 14 Bom. 331

QUESTION OF FACT—*concluded.*

See CASES UNDER SPECIAL APPEAL—GROUNDS OF APPEAL—QUESTIONS OF FACT.

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R. 17 Calc. 291
[I. L. R. 18 Calc. 302
[I. L. R. 15 All. 413

QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT.

[I. L. R. 21 Calc. 484, 523

See REMAND—CASES OF APPEAL AFTER REMAND.

[I. L. R. 15 All. 413

See SPECIAL APPEAL — GROUNDS OF APPEAL—QUESTIONS OF FACT.

[I. L. R. 20 Calc. 93

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R. 17 Bom. 303
[I. L. R. 15 All. 413

—— or usage.

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

[I. L. R. 15 Bom. 376

RAILWAY, CARRIERS BY.

See CARRIERS.

[I. L. R. 18 Calc. 427, 620

RAILWAY ACT (IV OF 1879).

See CARRIERS.

[I. L. R. 18 Calc. 620

——, s. 11.

See CARRIERS.

[I. L. R. 19 Calc. 538

——, s. 210.

See CARRIERS.

[I. L. R. 18 Calc. 427

RAILWAY ACT (IX OF 1890).

See CARRIERS.

[I. L. R. 18 Calc. 620

——, ss. 41, 45, 46.

See RAILWAY COMPANY.

[I. L. R. 15 Bom. 537
[I. L. R. 16 Bom. 434

——, ss. 54, 72.

See RAILWAY COMPANY.

[I. L. R. 17 Bom. 417

RAILWAY COMPANY.

1.—"*Terminal charges*"—*Right of G. I. P. Railway Company to levy terminal charges—Stat.* 12 *and* 13 *Vic., Chap.* 83 (*Local and Pers.*)—*—Railway Act* (*IX of* 1890), *ss.* 41, 45, 46, *Carriers*]. By the Act of Incorporation of the defendant Company it was enacted that it should be lawful for the Railway Company and the East India Company to enter into such contracts, &c., as they thought fit (*inter alia*) "for performing all matters and things necessary or convenient for carrying into effect the making, maintaining and working the railway * * * including any provision as to the tolls, receipts and profits thereof." Subsequently the defendant Company and the East India Company entered into an agreement with each other, under which the defendant Company were empowered to make certain charges called "terminal charges"—charges which are levied on account of the carrying of goods to and from the waggon, loading and unloading them on and from the waggon, and for the use of the Company's premises till the goods are removed. The plaintiffs sued to recover from the defendants the sum of Rs. 1,34,152-11, which during the three years prior to suit the plaintiffs had been obliged by the defendants to pay as "terminal charges" on consignments of cotton made by the plaintiffs from up-country stations to Bombay. The plaintiffs objected to these charges as not within the scope of the powers conferred by the Act of Incorporation of the defendant Company, and contended (1) that such charges were illegal; (2) that if not illegal they were excessive:—*Held*, by FARRAN, J., dismissing the suit, that the defendants were entitled to charge "terminal charges" on the goods carried by them for the plaintiffs, subject only, as to the rates and amounts thereof, to the sanction of Government; and that the rates charged to the plaintiffs were not higher than the sanctioned charges. "Terminal charge" means a charge for the use of goods station and for the various duties which a railway company, as common carriers, perform in connection with the goods consigned to them for carriage. *Semble*:—Under sections 41, 45 and 46 of Act IX of 1890 the High Court has no jurisdiction to consider or entertain a claim relating to terminals charged by the defendants subsequently to the time at which that Act came into operation:—*Held*, on appeal (SARGENT, C.J., and BAYLEY, J.), that these charges were within the authority given by that Act. Such charges—if not strictly "tolls"—were certainly charges for performing of services, if not "necessary" at any rate "convenient for the working of the railway," and payment for such services might also properly be regarded as a source of "profit" to the Railway Company, within the meaning of that Act. The only "terminal charge" sanctioned by Government was a charge sanctioned in 1865, and then expressly defined as "including collection and delivery." The defendant Company had since that date given up "collecting and delivering," but there had been no new scale of terminal charges submitted for sanction, or sanctioned. It was consequently contended by the plaintiffs that the "terminal charge" now

RAILWAY COMPANY—*concluded.*

levied had never been sanctioned. *Held*, also that a review of the proceedings leading to the sanction of 1865 showed that Government had contemplated the possible abandonment by the Company of "collection and delivery" when it sanctioned the rate then fixed: and that consequently it must be presumed that Government had left it to the defendant Company to make such deductions, in case of abandonment of this portion of their services, as they should think proper, which they had done. LALJIBHAI SHAMJI *v.* G. I. P. RAILWAY COMPANY.

[I. L. R. 16 Bom. 434

Affirming decision of lower Court in same case.

[I. L. R. 15 Bom. 537

2.—*Exemption from liability—Special contract—Risk note—Railway Act (IX of* 1890). *section* 54, *clause* (1) *section* 72, *clauses* (*a*), (*b*), *sub-clauses* (2) *and* (3)—*Carriers Act*, 1865.] The plaintiff sued the defendants (a Railway Company) for damage for short delivery of goods consigned to him. The defendants pleaded a special contract signed by the consignor, which, in consideration of their carrying the goods at a special reduced rate instead of the ordinary tariff rate, exempted them from liability for loss or damage to the goods from any cause whatever, before, during, and after transit over their railway or other railways working in connection therewith: *Held*, that under the contract the defendants were not liable to the plaintiff. TIPPANNA *v.* SOUTHERN MARATHA RAILWAY COMPANY.

[I. L. R. 17 Bom 417

3—*Railway Act* (*IV of* 1879). *s.* 11—*Loss of goods—Liability of company—Carrier—Bailment—Declaration of nature and value of goods and payment of increased charge, effect of—Contract Act IX of* 1872. *s.* 151.] In respect of goods for which under s. 11 of the Indian Railway Act IV of 1879, a railway company is under no liability unless "an increased charge" is paid, the payment of an increased charge puts them under the same liability as they are under with respect to goods not specially provided for by that section, *viz.*, the liability of ordinary bailees. The payment of "an increased charge" is not equivalent to insurance. In January 1890, a box containing silver specie was delivered by the plaintiffs to the defendant Company in Bombay to be carried to Saugor. At the time of such delivery the contents of the box were declared, and an increased charge above the charge for ordinary parcels was paid. The box was lost during its transmission to Saugor, but no evidence was called by the defendants to show what was done with the box between Itarsi and Saugor. In 1893 the plaintiffs sued the defendants to recover its value:—*Held*, that the defendants had not discharged the *onus* which lay upon them of showing that they had fulfilled the duties of a bailee as laid down in s. 151 of the Contract Act (IX of 1872), and that they were liable for the amount claimed. RAISETT CHANDMULL HAMIRMULL *v.* G. I. P. RAILWAY COMPANY.

[I. L. R. 17 Bom. 723

RAILWAY RECEIPTS.

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[I. L. R. 14 Bom. 57

RASH AND NEGLIGENT ACT.

See HURT.

[I. L. R. 18 Calc. 49

RECEIPT FOR DEPOSIT WITH BANK.

See CONTRACT—CONDITIONS PRECEDENT.

[I. L. R. 14 Bom. 498

RECEIVER.

See APPEAL—RECEIVERS.

[I. L. R. 17 Calc. 680

See COSTS—SPECIAL CASES—ATTORNEY AND CLIENT.

[I. L. R. 21 Calc. 85

See PRACTICE—CIVIL CASES—APPLICATION BY PERSON NOT PARTY TO SUIT.

[I. L. R. 17 Calc. 285

See PRACTICE—CIVIL CASES—SALE BY RECEIVER.

[I. L. R. 21 Calc. 479

——, Application to restrain from parting with fund.

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS.

[I. L. R. 21 Calc. 561

——, Attachment of money in hands of.

See ATTACHMENT—MODE OF ATTACHMENT AND IRREGULARITIES IN ATTACHMENT.

[I. L. R. 21 Calc. 85

1.—*Receiver in testamentary suit—High Court, Power of—Succession Act* (*X of* 1865), *s.* 239.] The High Court has power to appoint a Receiver in a testamentary suit. YESHWANT BHAGWANT *v.* SHANKAR RAMCHANDRA.

[I. L. R. 17 Bom. 388

2.—*Joint estate—Mortgage—Jurisdiction—Civil Procedure Code* (*Act XIV of* 1882), *s.* 503.] In a suit for partition of a joint estate the words "property the subject of a suit" in s. 503 of the Civil Procedure Code mean the whole joint estate. In such a case "the owner" in s. 503 (*d*) means the whole body of owners to whom the joint estate belongs. The Court has jurisdiction to place the whole of a joint estate out of which a plaintiff seeks to have his share partitioned in the hands of a Receiver, and to order that a Receiver so appointed shall be at liberty to raise money on the security of the whole of such joint estate. PORESH NATH MOOKERJEE *v.* OMERTO NAUTH MITTER.

[I. L. R. 17 Calc. 614

RECEIVER—*continued.*

3.—*Powers of Receiver—Right to sue without permission of Court—Suit for ejectment—Monthly tenant holding over after expiry of notice to quit.*] The order appointing a Receiver gave him power "to let and set the immoveable property or any part thereof as he shall think fit, and to take and use all such lawful and equitable means and remedies for recovering, realising, and obtaining payment of the rents, issues, and profits of the said immoveable property, and of the outstandings, debts and claims, by action, suit or otherwise, as shall be expedient":—*Held*, under the terms of such order, the Receiver had power to sue to eject, without obtaining permission of the Court, a monthly tenant whose tenancy was determinable by a notice to quit which had been duly served. *Drobomoyi Gupta* v. *Davis*, I. L. R. 14 Calc. 323, distinguished. HURI DASS KUNDU *v.* MACGREGOR.

[I. L. R. 18 Calc. 477

4.—*Receiver of mortgaged property appointed at instance of mortgagee—Receiver appointed by appeal Court — Practice.*] In a suit by a mortgagee for foreclosure or sale in default of payment of his mortgage debt the Court of First Instance when passing a decree for the plaintiff refused, on the plaintiff's application, to appoint a Receiver of the rents and profits of the mortgaged property. The plaintiff appealed against the latter part of the decree, and after filing a memorandum of appeal obtained a rule for the appointment of a Receiver until the hearing of the appeal. The Court of appeal after argument made the rule absolute, and appointed a Receiver until the hearing of the appeal, and subsequently, when the appeal came on for hearing, varied the decree of the Court below by appointing a Receiver of the mortgaged property. The High Court possesses the same powers with regard to the appointment of a Receiver as are possessed and exercised by the Courts in England under the Judicature Act. JAIKISSONDAS GANGADAS *v.* ZENABAI.

[I. L. R. 14 Bom. 431

5.—*Receiver in insolvency proceedings under Civil Procedure Code.—Civil Procedure Code, s.* 356—*Commission of Receiver how computed.*] A Receiver appointed in insolvency proceedings under the Civil Procedure Code is entitled to a lien for the amount of his commission on the net assets remaining after payment of the charges specified in Civil Procedure Code, s. 356 (*b*), (*c*) and (*d*). MAHADEVA *v.* KUPPUSAMI.

[I. L. R. 15 Mad. 233

6.—*Refusal to remove a Receiver and Manager of the estate of Hindu widows—Discretion of Court.*] Case in which rights and proceedings rendering a Court's order, refusing to remove an appointed Receiver and Manager of the estate, of which the widowed Ranis of the late Maharaja of Tanjore had become possessed by grant from the Government, were considered, and such order held to be entirely a matter for the discretion of the Court, which had exercised its discretion soundly. EX-PARTE JIJAI AMBA.

[I. L. R. 13 Mad. 390

RECEIVER—*concluded.*

7.—*Partnership funds in hands of Receiver—Attachment by some of many creditors—Leave of Court for attachment necessary—Terms on which leave is granted.*] Where a fund, such as the assets of a partnership, is in the hands of the Court through its officer the Receiver, one out of the whole body of creditors against the fund will not be allowed to gain priority over the remainder by the expedient of attaching the moneys in the hands of the Receiver. Such an attachment is an interference with the Court's possession through its officer the Receiver, and may not, therefore, be made without the Court's leave first obtained; which leave will not be granted except on such terms as will ensure equality between the creditors. KAHN *v.* ALI MAHOMED HAJI UMER.

[I. L. R. 16 Bom. 577

See MAHOMMED ZOHURUDDEEN *v.* MAHOMMED NOOROODDEEN.

[I. L. R. 21 Calc. 85

8.—*Estate administered by Court—Money in hands of Receiver—Pressing claims against estate, or part owners thereof—Power to order Receiver to pay—High Court, power of.*] Plaintiff was admittedly entitled to a half share of an estate, which this suit was brought to divide. A decree had been made referring it to the Commissioner to ascertain and divide the said estate, and a Receiver had been appointed. No power had been specially reserved by the decree to the Receiver to pay pressing or other debts due by the estate, or the part owners thereof. Some time would elapse before the accounts could be taken in the Commissioner's office, and meanwhile two creditors were threatening attachment of the property of the estate, and their debts were running at considerable interest. The estate was not otherwise indebted. There was money in the Receiver's hands to the credit of the estate, half of which would be more than sufficient to pay off the claims of these creditors. The plaintiff applied to the Court for an order to the Receiver to pay these two debts out of the plaintiff's half share of the moneys in his hands, leaving the plaintiff to prove his right to debit the estate with such payments:—*Held*, that the Court had power to make the order asked for, though such an order would only be made in special cases and on special conditions. *Held*, further, that the present was a case in which the order asked for might properly be made. MOTIVAHU *v.* PREMVAHU.

[I. L. R. 16 Bom. 511

RECOGNIZANCE TO KEEP PEACE.

Criminal Procedure Code, s. 107—*Power of the Magistrate of a district to call upon a person residing in another district to furnish security—Persons out of the jurisdiction.*] Section 107 of the Criminal Procedure Code does not empower a Magistrate to issue process under it to a person not residing within his jurisdiction. *In the matter of the petition of Jai Parkash Lal*, I. L. R. 6 All. 26, followed. *In the matter of the*

RECOGNIZANCE TO KEEP PEACE— *concluded.*

petition of Rajendro Chunder Roy Chowdhry, I. L. R. 11 Calc. 737. and *In the matter of the petition of Dinonath Mullick*, I. L. R. 12 Calc. 133, approved. IN THE MATTER OF THE PETITION OF ABDUL AZIZ.

[I. L. R. 14 All. 49

RECORD OF RIGHTS.

See BENGAL TENANCY ACT, s. 102.

[I. L. R. 21 Calc. 38

See BENGAL TENANCY ACT, s. 103.

[I. L. R. 19 Calc. 641, 643

See BENGAL TENANCY ACT, s. 108.

[I. L. R. 21 Calc. 521

RECORDER OF RANGOON, JURISDICTION OF.

—Civil Procedure Code (Act XIV of 1882), s. 16 (c), proviso—Suit for damages for trespass on land and for injunction.] The plaintiff sued in the Court of the Recorder of Rangoon to recover damages for trespass on land in his own possession situate outside the limits of the original jurisdiction of the Recorder's Court; asking at the same time for an injunction restraining the defendant from further acts of trespass Both plaintiff and defendant resided within the limits of the original jurisdiction of the Recorder's Court:—*Held*—(1) that the plaintiff having alleged that the land was in his possession was not entitled to the benefit of the proviso to s. 16 of the Code of Civil Procedure; and (2) that a suit for damage to land cannot be said to be a suit for which relief can be entirely obtained through the personal obedience of the defendant, even though it may be joined with a claim for an injunction; and that for the above reasons the Recorder had no jurisdiction to try the suit. CRISP *v.* WATSON.

[I. L. R. 20 Calc. 689

RECURRING RIGHT.

See LIMITATION ACT, 1877, ART, 131.

[I. L. R. 15 Mad. 161

REDEMPTION.

See CASES UNDER MORTGAGE—REDEMPTION.

——, Decree for—

See DECREE—FORM OF DECREE—MORTGAGE.

[I. L. R. 16 Mad. 121

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATE.

[I. L. R. 14 All. 350

——, Right of—

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[I. L. R. 13 All. 315
[I. L. R. 21 Calc. 116

REDEMPTION—*concluded.*

——, Suit for—

See DECREE—FORM OF DECREE—MORTGAGE.

[I. L. R. 15 Bom. 692

See CASES UNDER LIMITATION ACT, 1877, ART. 148.

See MALABAR LAW—MORTGAGE.

[I. L. R. 14 Mad. 76, 301
[I. L. R. 16 Mad. 328

See PARTIES—PARTIES TO SUITS—BENAMIDAR.

[I. L. R. 15 Mad. 54

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[I. L. R. 16 Bom. 599

See RES JUDICATA—CAUSE OF ACTION.

[I. L. R. 15 Mad. 366

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 14 Bom. 327

See VALUATION OF SUIT—APPEALS.

[I. L. R. 13 All. 94
[I. L. R. 16 Mad. 326, 415

See VALUATION OF SUIT—SUITS.

[I. L. R. 14 Mad. 480
[I. L. R. 14 Bom. 19
[I. L. R. 16 Mad. 328

——, Time for—

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE.

[I. L. R. 20 Calc. 279

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 15 Bom. 370

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW.

[I. L. R. 15 Mad. 170

REFERENCE TO HIGH COURT—CIVIL CASES.

See MAMLATDARS COURTS ACT.

[I. L. R. 14 Bom. 371

See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS — PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.

See STAMP ACT, s. 50.

[I. L. R. 15 Mad. 259

REFERENCE TO HIGH COURT—CIVIL CASES—*concluded.*

1.—*Civil Procedure Code*, 1882, *s.* 646*B*—*Reference where appeal lies to lower Court—Case in which jurisdiction of Small Cause Court is doubted.*] A suit to recover a sum of money as payable to the plaintiff under an award which was contested was filed in a Subordinate Court on the small cause side. The Subordinate Judge returned the plaint, being of opinion that the suit was not cognizable by a Court of Small Causes. The plaint was then presented in the Court of the District Munsif as an ordinary suit, but the District Munsif returned it on the ground that the suit was cognizable by a Court of Small Causes. The plaintiff then applied to the District Judge to submit the record for the orders of the High Court:—*Held*, that the District Judge was bound to submit the record to the High Court under s. 646B of the Code of Civil Procedure on the requisition of the plaintiff, although the plaintiff might have appealed to the District Court against the order of the District Munsif. SIMSON *v.* MCMASTER.

[I. L. R. 13 Mad. 344

2.—*Civil Procedure Code*, *s.* 617—*Reference of question arising in execution of a decree—Final decree.*] A question arising in execution of a decree cannot be referred for the decision of the High Court under s. 617 of the Civil Procedure Code (Act XIV of 1882) except where the decree is final. ORIENTAL LOAN ASSOCIATION *v.* HATCH.

[I. L. R. 17 Bom. 735

3.—*Civil Procedure Code*, *s.* 646*B*—*Civil Procedure Code Amendment Act* (*VII of* 1888), *s.* 60—*Provincial Small Cause Court Act* (*IX of* 1887), *s.* 16—*Power of High Court on reference under s.* 646*B.*] Notwithstanding s. 16 of the Provincial Small Cause Courts Act the High Court has, on a case being submitted to it under s. 646B of the Civil Procedure Code, full power to consider the matter of jurisdiction or to deal with it on the merits, so as to do substantial justice without putting the parties to the expense of a fresh trial. SURESH CHUNDER MAITRA *v.* KRISTO RANGINI DASI.

[I. L. R. 21 Calc. 249

REFERENCE TO HIGH COURT—CRIMINAL CASES.

See PRACTICE—CRIMINAL CASES—REFERENCE TO HIGH COURT.

[I. L. R. 18 Calc. 186

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R. 15 Bom. 452

——, by Presidency Magistrate.

See RIGHT TO BEGIN.

[I. L. R. 19 Calc. 380

1.—*Criminal Procedure Code*, 1882, *s.* 307—*Duty of Sessions Judges as to referring cases tried with a jury.*] The discretionary power to refer cases conferred on Sessions Judges by Criminal Procedure Code, s. 307, should always be exercised when the Judge thinks that the verdict is not supported by the evidence. QUEEN-EMPRESS *v.* GURUVADU.

[I. L. R. 13 Mad. 343

REFERENCE TO HIGH COURT—CRIMINAL CASES—*concluded.*

2.—*Criminal Procedure Code* (*Act X of* 1872), *s.* 466—(*Act X of* 1872), *s.* 197—*Power of High Court on reference—Grounds for non-interference—Government orders as to tribunal for trial of officials—Magistrate, jurisdiction of.*] In 1890 the Collector of Ganjam reported to the Board of Revenue a charge of bribery, &c., against a Sub-Magistrate and received directions to send the case for trial to some Magistrate other than himself, or the Principal Assistant Magistrate. He accordingly sent it to the Senior Assistant Magistrate of Berhampore; the accused was convicted, but he appealed to the Sessions Judge, who held that the Magistrate had jurisdiction to try it, but reversed the conviction on the merits. The Government did not appeal against the acquittal of the accused, but the District Magistrate referred to the High Court the question whether the Magistrate had jurisdiction:—*Held*, on the reference, that it was not a case for the interference of the High Court, because (1) it was not shown that the Magistrate had acted without jurisdiction; (2) Government had not appealed against the acquittal by the Sessions Judge who had tried and determined the question of jurisdiction. QUEEN-EMPRESS *v.* RANGA RAU.

[I. L. R. 15 Mad. 36

REFORMATORY SCHOOLS ACT (V OF 1876.)

s. 8.—*Magistrate's duty under that section to ascertain the prisoner's age—Nature of proceeding under that section—High Court's power of revising such proceeding—Criminal Procedure Code* (*Act X of* 1882), *ss. 4 and* 435—*Judicial proceeding.*] A Magistrate acting under s. 8 of the Reformatory Schools Act (V of 1876) is bound to ascertain the age of the prisoner, and, in accordance with that finding, to direct the confinement in a reformatory according to the rules made under s. 22 of the Act. It is not sufficient for the Magistrate merely to find that the prisoner is under a particular age. Under s. 8 of the Act, evidence may be taken by the Magistrate as to the age of the prisoner; and as the proceeding of the Magistrate involves the alteration of a sentence after the exercise of judicial discretion, such proceeding is clearly a judicial proceeding within the meaning of ss. 4 and 435 of the Code of Criminal Procedure (Act X of 1882). The High Court is, therefore, competent to exercise its revisional jurisdiction in such cases. QUEEN-EMPRESS *v.* MANAJI.

[I. L. R. 14 Bom. 381

——, s. 22.—*Government Notification* (*India*) *No.* 173 *of the* 14*th March* 1889—*Sentence.*] Where a boy over fourteen, but otherwise of uncertain age, was ordered upon conviction by a

REFORMATORY SCHOOLS ACT (V OF 1876), s. 22—*concluded.*

Magistrate to be detained in a Reformatory School for two years:—*Held* that such sentence, having regard to the rule made by the Governor-General in Council on the 14th March 1889 under s. 22 of Act V of 1876 was illegal. The proper course for the Magistrate to have adopted with reference to the above-mentioned rules was to have ascertained, as near as might be, the exact age of the offender and sentenced him to a specified period of detention, which should be that elapsing between his conviction and the attainment by him of the age of eighteen years. QUEEN-EMPRESS *v.* NARAIN.

[I. L. R. 15 All. 208

REGISTER.

See EVIDENCE — CIVIL CASES—MISCELLANEOUS DOCUMENTS — REGISTERS.

[I. L. R. 19 Calc. 91

See EVIDENCE ACT, s. 74.

[I. L. R. 18 Calc. 534

——, Entry in.

See EVIDENCE ACT, s. 32.

[I. L. R. 19 Calc. 689

See EVIDENCE ACT, s. 35.

[I. L. R. 20 Calc. 940

See LAND REGISTRATION ACT (BENGAL), s. 7.

[I. L. R. 17 Calc. 304

REGISTRAR.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.

[I. L. R. 15 Mad. 138
[I. L. R. 15 All. 141

—— of High Court, reference to.

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[I. L. R. 19 Calc. 334

—— of High Court, sale by.

See PRACTICE—CIVIL CASES—SALE BY REGISTRAR.

[I. L. R. 21 Calc. 566

REGISTRATION.

——, Effect of.

See DEED—PROOF OF GENUINENESS.

[I. L. R. 17 Calc. 903

See HINDU LAW—GIFT—REQUISITES FOR GIFT.

[I. L. R. 20 Calc. 464

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[I. L. R. 13 All. 432

See VENDOR AND PURCHASER—NOTICE.

[I. L. R. 17 Bom. 741

REGISTRATION—*concluded.*

—— of false divorce.

See CHEATING.

[I. L. R. 17 Calc. 606

—— of transfer of tenure.

See BENGAL TENANCY ACT, s. 12.

[I. L. R. 19 Calc. 17

——, Suit to enforce.

See VALUATION OF SUIT—SUITS.

[I. L. R. 13 Mad. 56

REGISTRATION ACT (III OF 1877).

——, s. 3.

See s. 49.

[I. L. R. 13 All. 89

——, s. 17.

See s. 49.

[I. L. R. 13 Mad. 308
[I. L. R. 14 Mad. 55
[I. L. R. 15 Mad. 336

See DEBTOR AND CREDITOR.

[I. L. R. 16 Mad. 85

See MORTGAGE—MARSHALLING.

[I. L. R. 13 Mad. 383
[I. L. R. 15 Mad. 268

1.—s. 17, cls. (b) and (h).—*Document giving right to obtain another document.*] Where by an *ikrarnama* tenants conjointly promised that they would sign, and have registered, *kabuliats* for rents at rates mentioned:—*Held*, that the document did not come under cl. (*b*) of s. 17 of the Registration Act III of 1877, as operating to create or declare an interest, but came under cl. (*h*) as a document merely creating a right to obtain another document, which would when executed create or declare an interest. PERTAP CHUNDER GHOSE *v.* MOHENDRANATH PURKAIT.

[I. L. R. 17 Calc. 291
[L. R. 16 I. A. 233

2.—s. 17, cls. (b), and (h).—*Document showing that a further deed was in contemplation as to same rights—Admissibility in evidence—Partition, deed of.*] Where a deed of partition between a mother and her son declared certain existing rights in her over moveable and immoveable property above the value of Rs. 100:—*Held*, that, although the deed showed that the execution of another deed with reference to those rights was in contemplation, yet the deed was one the registration of which was compulsory under s. 17 of the Registration Act, and being unregistered was not admissible in evidence of the mother's title to either the moveable or immoveable property. LAKSHMAMMA *v.* KAMESWARA.

[I. L. R. 13 Mad. 281

REGISTRATION ACT (III OF 1877), s. 17—*continued.*

3.—s. 17.—*Lease—Compulsory registration.*] Where a lease deed contained a clause whereby the tenancy thereunder was absolutely determinable at any moment at the option of the lessor, it was held that such deed was not compulsorily registrable under s. 17 of the Registration Act, notwithstanding that it also contained provisions for an "annual rental," and for payment of "rent in advance each year," provisions which, had they stood alone, would have raised a presumption that a tenancy exceeding a year was contemplated:—*Jagjivandas Javherdas* v. *Narayan*, I. L. R. 8 Bom. 493; *Morton* v. *Woods*, L. R. 3 Q. B. 658, and *Hand* v. *Hall*, L. R. 2 Ex. D. 355, referred to and approved. RATNASABHAPATHI *v.* VENKATACHALAM.

[I. L. R. 14 Mad. 271

4.—s. 17, cl. (d).—*Lease for one year—Lease exceeding one year—Option of renewal.*] A lease for one year, containing an option of renewal for a further period of one year, is not a lease for a term exceeding one year within the meaning of cl. (*d*), s. 17 of the Registration Act, so as to render registration thereof compulsory. Certain correspondence passed between the plaintiff and the defendant relating to a lease of a flat in premises in occupation of the plaintiff which admittedly contained an agreement for a lease for one year with an option of renewal for another year. The terms in which the option was given were as follows:—The defendant in one letter wrote: "So I expect you will give me the option of renewal for another year, respectively five months, on same terms." To which the plaintiff replied—"You may have the option of retaining it (the flat) for another year on the same terms, but not for a shorter period." In pursuance of an arrangement the defendant had a draft lease prepared embodying the terms agreed on which he sent to the plaintiff for approval, and which was in due course returned by him "approved." The defendant then had the lease engrossed and properly stamped, but the plaintiff eventually, refused to execute it, and it was never signed by the defendant. The option of renewal was given in the unexecuted lease in the following terms: "Also with option to renew for another twelve months certain." The defendant having entered into possession and disputes having arisen, the plaintiff gave him notice to quit and sued to eject him, alleging that at the most he was a mere monthly tenant. The defendant pleaded that under the lease he was entitled to hold for a year. The year expired before the suit came on to be heard, and the defendant not having exercised the option to renew, vacated the premises. At the hearing the defendant in support of his case tendered the correspondence and the stamped unexecuted lease. It was objected that the correspondence was inadmissible in evidence—because the option to renew made the period for which the lease was to run exceed one year, and therefore rendered registration compulsory. On behalf of the defendant it was urged that registration was unnecessary, as the option did not make the lease one for a longer period than one year, and that the stamped unexecuted lease must be treated as part of the correspondence:—*Held*, following *Hand* v. *Hall*, L. R. 2 Ex. D. 355, that the existence of the option did not create a lease for a term exceeding one year within the meaning of cl. (*d*), s. 17 of the Registration Act, and that consequently the correspondence did not require registration. *Bhobani Mahto* v. *Shibnath Para*, I. L. R. 13 Calc. 113, dissented from. BOYD *v.* KREIG.

[I. L. R. 17 Calc. 548

5.—s. 17.—*Lease reserving annual rent—Tenancy-at-will.*] The defendant executed to the plaintiff a rent-note under which he rented two houses from the plaintiff at a rent of Rs. 18 per annum. The document provided that the defendant was to live in the said houses so long as the plaintiff permitted him to do so, and so long as he should pay the rent. He was to vacate when asked to do so by the plaintiff:—*Held*, that the lease created a tenancy-at-will, and did not require registration, although an annual rent was reserved thereby. JIVRAJ GOPAL *v.* ATMARAM DAYARAM.

[I. L. R. 14 Bom. 319

6.—s. 17.—*Endorsement on a sanad returning the sanad to the grantor—Evidence—Admissibility.*] The plaintiff sought to attach a certain *hak* as belonging to his judgment-debtor *K*. The defendant, who was the original grantor of the *hak*, pleaded a re-grant of the *hak* to himself. In support of this plea, the defendant produced from his possession the original *sanad* bearing the following endorsement by *K*:—"You have passed me a receipt for the *sanad*. I have, accordingly, given you the ownership of the *sanad*. Therefore over the said *sanad* I have no right or title." The defendant offered to put in this endorsement, and also tendered the evidence of *K*'s brother. This evidence was rejected by the Court, on the ground that the endorsement, which had the effect of extinguishment the grant, was not registered:—*Held*, that the endorsement did not require registration. It did not itself rescind the grant to *K*, nor constitute a re-grant to the defendant. It was simply an endorsement returning the *sanad* to the defendant, and therefore passed no interest in any property. HERAMBDEV DHARNIDHARDEV *v.* KASHINATH BHASKAR.

[I. L. R. 14 Bom. 472

7.—s. 17 and s. 49.—*Letters of one partner to another transferring to the latter the share of the former in the assets of the firm, including the mortgages, but not mentioning them—Necessity of registering such letters—The words "document" and "instrument" in the Registration Act.*] By two mortgage-bonds, dated, respectively, 25th July 1866, and 19th September 1870, certain lands were mortgaged to a firm of money-lenders at Khadkala, carrying on business under the style of *G* and *M*. There were four partners in the firm, *viz.*, *G*, *M*, *P* and *S*. In 1874 *G* retired from the firm, and wrote three letters, the effect of which was to transfer his share in the partnership to *P*

REGISTRATION ACT (III OF 1877), s. 17—*concluded.*

and *S*. In 1878 the shop was closed, and the partners divided the assets of the firm. The two mortgages fell to the share of *S*. Subsequently *S* died, and the plaintiff, his son, inherited his property and took possession of the mortgaged lands. These lands were afterwards attached in execution of a money decree against one of the mortgagors (defendant 1). The plaintiff objected to the attachment, but his objection was disallowed, and the property was sold in execution and purchased by defendants 2 and 3. The plaintiff then filed this suit to establish his rights under the two mortgage-bonds. The defendants contended that the plaintiff had no interest in the mortgages, and was not entitled to sue. The plaintiff relied (*inter alia*) in support of his title upon the letters (A. B and C), whereby *G* had transferred his share in the assets of the firm to his (the plaintiff's) father *S*. These letters were objected to as inadmissible in evidence, not having been registered:—*Held*, that, independently of the letters, there was evidence to show that the plaintiff's father *S* was a partner in the firm, and that as such partner the mortgages in question fell to his share at the final division of assets. The position of *S* as a partner being once established, his right to the property followed by operation of law, and no other proof of title was required. *Per* JARDINE, J.:—"To lay down that the three letters in question, which deal generally with the assets, moveable and immoveable, without specifying any particular mortgage or other interest in real property, require registration, would, I incline to think, in the present state of the authorities, go too far. It may be argued that such letters are not 'instruments of gift of immoveable property,' but rather disposals of a share in a partnership of which the business is money-lending, and the mortgage securities merely incidental thereto." *Per* TELANG, J.:—"Although a partner's share does not include any specific part of any specific item of the partnership property, still where the partnership is entitled to immoveable property such share does include an interest in immoveable property and therefore every instrument operating to create or transfer a right to such share requires to be registered under the Registration Act (III of 1877). It is true that the authorities referred to apply, in terms, only to immoveable property owned by a partnership. But I am, on the whole, disposed to hold that the principle of those authorities applies to cases where immoveable property is held by a firm not in full proprietorship, but only by right of mortgage. . . Upon the whole I should, if necessary, have been disposed to hold that the letters in question not being registered were rightly treated by the Court below as being inadmissible in evidence to prove directly a transfor of the share of *G* in the partnership to *S*." *Per* TELANG, J.:—A perusal of various sections of the Registration Act seems to show that the Legislature has used the words "document" and "instrument" interchangeably. JOHARMAL *v.* TEJRAM JAGRUP.

[I. L. R. 17 Bom. 235

REGISTRATION ACT (III OF 1877), s. 21—*concluded.*

1.—s. 21, and ss. 7 and 28.—*Description of property in deed—Deed referring to land not in the Sub-District of registering officer, a Sub-Registrar.*] Certain property was described in a mortgage-bond as bearing *towji* number 10, as paying a sudder *jama* of Rs 719, and as lying within the jurisdiction of *thana* Kotwali, sub-district Bhagulpur, collectorate of Bhagulpur. This description was so far erroneous in that the property was in reality situated in *thana* Amarpur, sub-district Banka, and bore a sudder *jama* of Rs. 919-15. Banka was, however, within the area of the district of Bhagulpur. The mortgage-bond was registered by the Sub-Registrar of Bhagulpur, who was, under s. 7 of the Registration Act, authorized, in addition to his own duties, to exercise and perform the duties and powers of the Registrar of Bhagulpur:—*Held*, by PIGOT, O'KINEALY, MACPHERSON and GHOSE, JJ., (PETHERAM, C. J., dissenting) that the provisions of s. 21 of the Act had not been complied with, that the description of the property was misleading and insufficient for the purposes of identification, and that therefore no registration of the document had been effected within the provisions of the Registration Act. *Held*, by PETHERAM, C. J., that the description was sufficient to identify the property, and that the Sub-Registrar having been authorized to exercise the powers and duties of the Registrar of Bhagulpur, and the property being situate in sub-district Banka, the Sub-Registrar of which sub-district was subordinate to the Registrar of the district of Bhagulpur, the provisions of s. 28 of the Act being directory only, registration of the document was valid. BAIJ NATH TEWARI *v.* SHEO SAHOY BHAGUT.

[I. L. R. 18 Calc. 556

2.—s. 21 and s. 60.—*Description of property not contained in the body of the deed of conveyance, but inserted as a foot-note.*] A conveyance of immoveable property did not contain, in the body of the deed, a description of it sufficient to identify it. In a foot-note, however, such a description was given, and it was signed by the assignee only. The deed was accepted by the Registrar, and was registered, and a certificate to that effect was given under s. 60 of the Registration Act (III of 1877). The deed being tendered in evidence was objected to on the ground that it ought to be treated as unregistered, since it had been improperly accepted for registration:—*Held*, that the error in accepting it, if error there was, did not invalidate the registration: see *Sah Mukhun Lal Panday* v. *Sah Koondun Lal*, 15 B. L. R. 228; L. R. 2 I. A. 210. ADAM ISUFBHAI *v.* JAMNADAS RANCHORDAS.

[I. L. R. 17 Bom. 94

———, s. 28.

See s. 21.

[I. L. R. 18 Calc. 556

See s. 49.

[I. L. R. 18 Calc. 556

REGISTRATION ACT (III OF 1877) —*continued.*

——, s. 36.

See s. 77.

[I. L. R. 16 Mad. 341

——, s. 47.

See s. 49.

[I. L. R. 13 All. 89

——, s. 48.

See MORTGAGE—MARSHALLING.

[I. L. R. 13 Mad. 383

[I. L. R. 15 Mad. 268

——, s. 48.—*Transfer of Property Act (IV of 1881), s. 54—Oral agreement for sale of land—Subsequent conveyance with notice—Delivery of possession — Priority — Specific performance.*] Plaintiff being in possession of certain land as an incumbrancer under a registered instrument agreed orally with the mortgagor in 1885 to purchase it. The mortgagor subsequently sold the land to others who took the conveyance which was registered with notice of the plaintiff's mortgage and of the oral agreement with him. Plaintiff now sued for a declaration that the conveyance was not binding on him and for specific performance of the oral agreement:—*Held*, that the plaintiff's possession under his incumbrance together with the agreement to sell was equivalent to delivery of possession within the meaning of Registration Act, s. 48 ; and that the plaintiff was entitled to have the oral contract specifically enforced notwithstanding the subsequent registered sale. KANNAN *v.* KRISHNAN.

[I. L. R. 13 Mad. 324

——, s. 49.

See s. 17.

[I. L. R. 17 Bom. 235

1.—s. 49.—*Transfer of Property Act (IV of 1882), s. 58—Unregistered mortgage—Suit on personal covenant to pay.*] An unregistered mortgage-deed executed in 1885 contained a personal covenant by the mortgagors to pay the debt secured thereby:—*Held*, the mortgagee was entitled to sue on the covenant and obtain a personal decree against the mortgagors. GOMAJI *v.* SUBBARAYAPPA.

[I. L. R. 15 Mad. 253

2.—s. 49 and ss. 3 and 47—*Assignment of decree for sale of hypothecated property—Non-registration of deed of assignment—Civil Procedure Code, s. 232—Effect of subsequent registration.*] The assignee of a decree for sale of hypothecated property applied, under s. 232 of the Civil Procedure Code, for execution of the decree, but objection being raised that the deed of assignment had not been registered, he subsequently applied for the return of the deed that it might be registered, and it was returned accordingly. The deed was afterwards duly registered:—*Held* (i) that the deed of assignment was not a document which comprised immoveable property within the meaning of s. 49 of the Registration

REGISTRATION ACT (III OF 1877), s. 49—*continued.*

Act (III of 1877), a decree for sale not being immoveable property as defined in s. 3; (ii) that consequently, although the assignee might not, under the latter portion of s. 49, use the deed for the purpose of proving his title, there was no provision in the Act saying that he should not take title under the deed; (iii) that the position of the assignee when he made his application on the 13th November 1886 was that he was unable to prove that there was a title by assignment in himself; (iv) that the subsequent registration cured the absence of registration on the 13th November 1886, and, under s. 47 of the Registration Act, the document thereupon had full effect, and related back to its execution. ABDUL MAJID *v.* MUHAMMAD FAIZULLAH.

[I. L. R. 13 All. 89

3.—s. 49 and s. 17.—*Covenant in unregistered lease—Suit for specific performance.*] The plaintiff leased a house to the defendant for three years by an unregistered instrument which contained a covenant by the lessee that he would purchase the house at a certain price on an event which took place. The plaintiff now sued for specific performance of the covenant:—*Held*, that the unregistered instrument was not admissible in evidence. The covenant sought to be enforced depended on the lease, and the latter being invalid for want of registration, the former must also fail: the suit therefore should be dismissed. SAMBAYYA *v.* GANGAYYA.

[I. L. R. 13 Mad. 308

4.—s. 49 and s. 17.—*Admissibility of unregistered sale-deed—Suit for specific performance of contract to sell land.*] The defendant executed a sale-deed of certain land to the plaintiff. The instrument bore Re. 1 stamp only. The plaintiff alleged that the defendant had improperly refused to register the sale-deed and prayed for a decree compelling its registration and for the possession of the land in question:—*Held*, that the unregistered instrument was admissible in evidence, and that in any case, secondary evidence of its contents was admissible, the document having remained unregistered through no fault of the plaintiff. NAGAPPA *v.* DEVU.

[I. L. R. 14 Mad. 55

5.—s. 49 and s. 17.—*Instrument affecting moveable and immoveable property.*] The widow, daughter, and divided brother of a deceased Hindu executed an instrument which provided for the distribution of his property, both moveable and immoveable as to which they had disputed. The document was not registered. The widow set up a will made by the deceased in her favour; the brother sued the widow for a declaration that the will was a forgery, but the Court held that it was genuine. He now sued the widow and daughter on the above instrument to recover his agreed share of the moveable property of the deceased. The widow set up the will, which the plaintiff averred was invalid according to the custom

REGISTRATION ACT (III OF 1877), s. 49—*concluded.*

governing the family:—*Held*, that the unregistered instrument was admissible as evidence in support of the plaintiff's claim for the moveable property. THANDAVAN *v.* VALLIAMMA.

[I. L. R. 15 Mad. 336

6.—s. 49, and ss. 28 and 60.—*Deed on which certificate under s. 60 has been endorsed—Document which should not have been registered under s. 28.*] *Semble:—Per* PIGOT, J.—A document on which a certificate under s. 60 has been duly endorsed cannot be held to have been duly registered under s. 49 of Act III of 1877, if it appears that the officer who made the certificate should not under s. 28 have registered the document BAIJ NATH TEWARI *v* SHEO SAHOY BHAGUT.

[I. L. R. 18 Calc. 556

1.—s. 50.—*Registered and unregistered documents—Priority—Mortgagee under registered deed competing with auction-purchaser at a sale under a decree on a prior unregistered mortgage-deed.*] Under s 50 of the Registration Act the decree or order which is not to be affected by a registered document must be a decree or order made prior to the execution and registration of the registered document. Therefore where the plaintiffs, who were mortgagees under a registered instrument, sued to set aside a sale to the defendants under a decree on an unregistered mortgage, the plaintiffs' registered mortgage being subsequent to the unregistered mortgage on which the defendants relied, but prior to the decree thereon:—*Held* that the defendants, auction-purchasers, must take subject to the rights of the plaintiffs as mortgagees. *Himalaya Bank* v. *Simla Bank*, I L. R. 8 All. 23; *Madar Saheb* v. *Subbarayalu Nayudu*, I. L. R. 6 Mad 88; *Kanhaiya Lal* v. *Bansidhar*, Weekly Notes, 1884, p. 136, and *Shahi Ram* v. *Shib Lal*, Weekly Notes, 1885, p 63, referred to. JAGRUP RAI *v.* RADHEY SINGH.

[I. L. R. 13 All. 288

2.—s. 50.—*Unregistered mortgage with possession—Subsequent registered mortgage—Notice—Priority.*] The defendants 1 and 2, in 1877, placed the plaintiff's father (since deceased) in possession of certain land as usufructuary mortgagee under an unregistered mortgage-deed for Rs. 99, and in 1883 mortgaged the same land to defendant 3 by a mortgage-deed, which was registered. Defendant 3 obtained a decree on his mortgage in 1886, and applied that the mortgaged premises should be sold. The plaintiffs, having opposed his application for an order for sale without success, now sued for a declaration of their title as mortgagees. It was found that defendant 3 took his mortgage with notice of the mortgage of 1877, but had not otherwise acted fraudulently:—*Held*, that the plaintiffs were entitled to priority in respect of the mortgage of 1877:—*Held* by the Full Bench, that when it is proved that a subsequent encumbrancer under a registered conveyance had notice of a valid prior unregistered encumbrance and of possession by such encumbrancer, or of such conveyance without possession the Courts are not bound to interpret the Registration Act of 1877, s. 50, so as to defeat the title of the prior encumbrancer. KRISHNAMMA *v.* SURANNA.

[I. L. R. 16 Mad. 148

REGISTRATION ACT (III OF 1877 s. 50—*concluded.*

——, s. 60.

See s. 49.

[I. L. R. 18 Calc. 556

——, s. 72.

See s. 77.

[I. L. R. 16 Mad. 341

——, s. 72 and ss. 73, 74 and 75.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.

[I. L. R. 15 Mad. 138

——, s. 73.

See SANCTION TO PROSECUTION—WHERE SANCTION IS NECESSARY.

[I. L. R. 15 All. 141

——, s. 73 and ss. 74. 75 and 76.

See s. 77.

[I. L. R. 16 Mad. 341

——, s. 77, and ss. 36, and 72 to 76.—*Compulsory registration—Suit to compel registration.*] The plaintiff and defendant agreed that, in consideration of a sum of money already paid and of a further sum to be paid on the completion of the transaction, the defendant should transfer a certain mortgage to the plaintiff, and an instrument of transfer was prepared and executed to give effect to that agreement, but it was not registered. The plaintiff now sued for a decree compelling the defendant to execute and register that or a similar instrument:—*Held*, that the plaintiff was not entitled to a decree for compulsory registration, and should have proceeded under Registration Act, ss. 36, 72 to 77. VENKATASAMI *v.* KRISTAYYA.

[I. L. R. 16 Mad. 341

——, s. 82.

See FALSE EVIDENCE.

[I. L. R. 20 Calc. 719

——, s 90, cl. (d).—*Documents purporting to be or to evidence, grants or assignments by Government of land or interest in land.*] The Agent to the Governor-General in a letter to the Nawab Bahadur of Moorshedabad announced the intentions of the Government as to his position and income, and informed him that he was to have possession of the State lands and jewels. In a suit by the son of the Nawab to recover possession from a person wrongfully in possession of land which was held by the lower Courts to be portion of such State lands, it was, *inter alia*, objected that the letter required registration:—*Held*, that the letter operated as a grant or an authority

REGISTRATION ACT (III OF 1877), S. 90—*concluded.*

from Government, and was exempt from registration, under the provisions of s. 90, cl. (*d*) of the Registration Act. HASSAN ALI *v.* CHUTTERPUT SINGH DUGARH.

[I. L. R. 19 Calc. 742

REGULATIONS MADE UNDER STATUTE 33 VICT., c. 3.

——1872—III, s 3 and s. 4.

See SONTHAL PERGUNNAHS SETTLEMENT.

[I. L. R. 18 Calc. 133

——, s. 11 and s. 25.

See SONTHAL PERGUNNAHS SETTLEMENT.

[I. L. R. 18 Calc. 146

——1886—I.

See ASSAM LAND AND REVENUE REGULATIONS.

[I. L. R. 17 Calc. 819

RE-HEARING.

See FOREIGN COURT, JUDGMENT OF.

[I. L. R. 15 Mad. 82

See PRIVY COUNCIL, PRACTICE OF — RE-HEARING.

[I. L. R. 14 Mad. 439

See SMALL CAUSE COURT, PRESIDENCY TOWNS — PRACTICE AND PROCEDURE—RE-HEARING OF SUIT.

[I. L. R. 18 Calc. 445

[I. L. R. 17 Bom. 14

RELEASE.

See STAMP ACT, SCH. I, ART. 54.

[I. L. R. 15 Mad. 259

RELIEF.

——, Alteration of—

See PLAINT—AMENDMENT OF PLAINT.

[I. L. R. 20 Calc. 805

——, Alternative and cumulative—

See VALUATION OF SUIT—SUITS.

[I. L. R. 15 Bom. 82

1.—*Variance between pleadings and proof—Relief not asked for.*] The plaintiff, alleging that a certain lane was his property, and that he had been obstructed by the defendants from building a door upon it, sued for an injunction and for damages. The Court held that the plaintiff's title to the land was not established, but passed a decree declaring that both the plaintiff and the defendants were entitled to use the lane by right of easement:—*Held*, that this declaration, which had not been asked for, should not have been made, and that the suit should have been dismissed for want of proof of the title alleged by the plaintiff. SAMBAYYA *v.* GOPALAKRISHNAMMA.

[I. L. R. 15 Mad. 489

RELIEF—*concluded.*

2.—*Inconsistent cases set up in the alternative—Relief not asked for.*] Defendant 1 mortgaged certain premises to defendant 2 in 1884 and to the plaintiff in 1885. The mortgage to the plaintiff was a usufructuary mortgage. In 1887 defendant 2 obtained a decree on his mortgage, and in execution brought to sale and himself became the purchaser of the mortgaged premises. The plaintiff, who was in possession under the mortgage of 1885, prayed in this suit that the prior mortgage be declared fraudulent and void, and the sale in execution be set aside, and in the alternative that she be declared entitled to redeem the prior mortgage. The plaint was stamped as in a redemption suit, and the Court of First Appeal passed a decree for redemption:—*Held*, that the suit should be dismissed, since after the sale of the mortgaged premises in execution of the decree obtained by defendant 2, the only right which remained to the puisne mortgagee was the right to retain possession until her mortgage should be redeemed. *Semble:*—*Per* BEST, J.—It is open to a plaintiff who is not a party to the transaction in respect of which allegations are made to come into Court seeking relief in the alternative, dependent upon what may be found by the Court to be the true facts of the case. *Quære*—Whether the Court can pass a decree for redemption when the plaint seeks only a declaration of the right to redeem. PERUMAL *v.* KAVERI.

[I. L. R. 16 Mad. 121

RELIGION, CHANGE OF.

See CUSTODY OF CHILD.

[I. L. R 16 Bom. 307

RELIGION, OFFENCE AGAINST.

See MAHOMEDAN LAW—MOSQUE.

[I. L. R. 12 All. 494

[I. L. R. 13 All. 419

RELIGION, OFFENCES RELATING TO.

—*Penal Code, s.* 295—"*Object*" *held sacred by any class of persons—Killing bulls set at large at Sradha in accordance with Hindu religious usage.*] The word "object" in s. 295 of the Penal Code does not include animate objects. A bull dedicated and set at large at the *Sradha* of a Hindu in accordance with religious usage is not an "object" within the meaning of that section. Where such an animal was killed by certain Mahomedans secretly and at night in the presence of none but Mahomedans for the sake of the meat and value of the skin:—*Held*, that no offence had been committed under s. 295. *Queen-Empress* v. *Imam Ali*, I. L. R. 10 All. 150, followed. ROMESH CHUNDER SANNYAL *v.* HIRU MONDAL.

[I. L. R. 17 Calc. 852

RELIGIOUS CEREMONIES.

See JURISDICTION OF CIVIL COURT—RELIGION.

[I. L. R. 15 Mad. 355

RELIGIOUS CEREMONIES—*concluded.*

See MAHOMEDAN LAW—CUSTOM.

[I. L. R. 18 Calc. 448

——, Performance of—

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—DISPUTES AS TO RIGHT OF WAY, WATER, &c.

[I. L. R. 14 Bom. 25

RELINQUISHMENT OF TENURE.

See CASES UNDER LANDLORD AND TENANT — ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM.

See ENDOWMENT.

[I. L. R. 14 Mad. 1

1.—*Civil Procedure Code*, 1882, *s.* 43—*Breaches of the same contract how sued upon—Cause of action—Contract.*] Where a contract for the sale and purchase of goods is broken by the purchaser, in part by refusal to take delivery, and in part by refusal to pay for goods delivered, both breaches having occurred before any suit is brought, the vendor is debarred by s. 43 of the Code of Civil Procedure from bringing two suits against such purchaser, his claim being one arising out of one cause of action and based on one and the same contract. The view taken by WILSON, J., in *Anderson, Wright & Co.* v. *Kalagarla Surjinarain*, I. L. R. 12 Calc. 339, approved. PETHERAM, C. J.—"The whole of the claim which the plaintiff is entitled to make in respect of the cause of action" in s. 43 means, in the above case, the entire claim which the plaintiff has against the defendant at the time the action is brought in respect of any failure or failures to accept and pay for goods purchased of him by the defendant under one contract, and the whole of such claim must be included in one action. PRINSEP, J.—The expression "cause of action" is to be construed with reference to the substance rather than the form of the action. The claim in both the above cases being for damages on account of breaches of the same contract, s. 43 read with the Illustration debars the plaintiff from bringing two suits. DUNCAN BROTHERS & CO. *v.* JEETMULL GREEDHAREE LALL.

[I. L. R. 19 Calc. 372

2.—*Civil Procedure Code, s.* 43—*Claims for possession and mesne profits—Distinct claims—Separate suits—Joinder of causes of action—Civil Procedure Code* (*Act XIV of* 1882), *s.* 44.] Claims for the recovery of possession of immoveable property and for mesne profits are distinct claims, and separate suits will lie in respect of each claim. Section 44 of the Code of Civil Procedure merely *permits* the joinder in one suit of a claim for recovery of immoveable property with one for mesne profits in regard to the same property. *Kishori Lal Roy* v. *Sharut Chunder Mozumdar*, I. L. R. 8 Calc. 593; 10 C. L. R. 359; *Mon Mohun Sirkar* v. *The Secretary of State for India*, I. L. R. 17 Calc. 968; and *Madan Mohun Lal* v. *Lala Sheosanker Sahai*, I. L. R. 12 Calc. 482, referred to; *Venkoba* v. *Subbanna*, I. L. R. 11 Mad. 151, dissented from. LALESSOR BABUI *v.* JANKI BIBI.

[I. L. R. 19 Calc. 615

3.—*Civil Procedure Code, s.* 43—"*Distinct cause of action*"—*Suit for possession after cancellation of Court-sale.*] In execution of a decree the defendant, who was sued as the representative of her deceased brother, objected, under s. 244 of the Code of Civil Procedure, to the attachment of certain lands to which she set up independent title. The objection was disallowed and the land was sold. She then sued the execution-purchaser to set aside the Court-sale and obtained a decree against which no appeal was preferred. She now sued for possession, and it was found that at the date of the previous suit she was not aware that the execution-purchaser had obtained possession:—*Held*, that the suit was not barred by the Civil Procedure Code, s. 43. AMBU *v.* KETLILAMMA.

[I. L. R. 14 Mad. 23

4.—*Civil Procedure Code, s.* 43—"*Omit to sue*," *meaning of.*] The plaintiff, having previously obtained against his brother, defendant 1, who had been the managing member of their family, a decree for partition of the family property including certain debts scheduled in the plaint therein, now sued to recover his share of certain other family debts collected by defendant 1, without the plaintiff's knowledge:—*Held*, that the claim was not barred by the Civil Procedure Code, s. 43. MARIATHODI *v.* APPU.

[I. L. R. 15 Mad. 296

5.—*Civil Procedure Code, s.* 45—*Suit by usufructuary mortgagee excluded from possession for unpaid interest—Cause of action—Subsequent suit for principal and residue of interest.*] A deed of mortgage executed in 1879 for a consideration of Rs. 300 provided that the term of the mortgage should be four years certain; that certain interest should be payable; that the mortgagee should have possession; that the profits should be appropriated first in lieu of yearly interest and any balance appropriated in payment of the principal debt; and that the mortgagor should be entitled to redeem if the principal and interest were paid at the expiration of the four years. The mortgagee never obtained possession; and in 1882 he brought a suit against the mortgagor to recover the unpaid interest then due, and obtained a decree, which was satisfied by the sale of property belonging to the judgment-debtor. In 1886 he brought another suit for recovery of the principal, together with the residue of interest up to the date of suit:—*Held*, that the cause of action in the suit of 1882 was the mortgagor's non-delivery of possession of the mortgaged property, by reason of which the mortgagee had been unable to realize his interest from the usufruct; that the cause of action accrued to the mortgagee

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*continued.*

from the moment the instrument came into operation and possession was not delivered; that the cause of action to recover the principal accrued at the same time and was the same cause of action; that the plaintiff was therefore bound in the suit of 1882 to sue for the principal; and that the present suit was consequently barred by s. 43 of the Civil Procedure Code. HIKMUTULLA KHAN *v.* IMAM ALI.

[I. L. R. 12 All. 203

6.—*Civil Procedure Code, s. 43—Splitting remedies—Suit for declaration of title and for possession—Subsequent suit for possession.*] Where a previous suit for a declaration of title to immoveable property has been dismissed on the ground that the plaintiff was not in possession at the time of filing the suit, a subsequent suit on the same title for recovery of possession of the land is not barred under s. 43 of the Code of Civil Procedure. *Jibunti Nath Khan* v. *Shib Nath Chuckerbutty*, I. L. R. 8 Calc. 819, followed. MOHAN LAL *v.* BILASO.

[I. L. R. 14 All. 512

7.—*Civil Procedure Code, s. 43—Decree against three of four uralans of a devasom—Suit to declare the decree binding on the fourth.*] The holder of a bond executed by two *uralans* of a Malabar *devasom* obtained a decree, declaring that the *devasom* property was liable for the secured debt, against the executants of the bond and one other *uralan*; the fourth *uralan* intervened in execution of the decree, and objected that the *devasom* property was not liable to be attached. His objection was upheld, and the plaintiff then brought a suit against him for a declaration that the debt was binding on him and on the *devasom* property:—*Held*, that the suit was not barred under the Civil Procedure Code, s. 43. RAMAN *v.* SRIDHARAN.

[I. L. R. 16 Mad. 449

8.—*Civil Procedure Code, s. 43—Cause of action.*] In 1889 the plaintiff sued the defendant for possession of a piece of land which the defendant had included in her homestead by building walls. In that suit the plaintiff alleged that on that land there were two palm-trees which belonged to him, and that the defendant had wrongfully prevented the *pasis* from going to those trees to tap them, but he asked in his plaint in that suit for no relief in respect of the trees, only stating that he would bring a separate suit for them. The Munsif dismissed that suit on the ground that the land was within the defendant's tenure, and his decision was affirmed on appeal. In a suit brought in 1890 against the same defendant for declaration of title to and possession of the two palm-trees and for an injunction restraining the defendant from disturbing his possession of them:—*Held*, that the claim arose out of the same cause of action as that in the former suit, and that the suit was therefore barred by s. 43 of the Code of Civil Procedure. MAKSUD ALI *v.* NARGIS DYE.

[I. L. R. 20 Calc. 322

RELINQUISHMENT OF, OR OMISSION TO SUE FOR, PORTION OF CLAIM—*concluded.*

9.—*Civil Procedure Code, s. 43—Cause of action—Joint property, suits for exclusion from and partition of—Co-sharers.*] One co-sharer suing another for exclusion from joint property, and omitting to include in his claim a portion of the property of which he seeks possession, is not debarred by s. 43 of the Code of Civil Procedure from suing to have the joint estate partitioned, including the portion omitted from the former suit, the causes of action in the two suits being different. ABDUN NASIR *v.* RASULAN.

[I. L. R. 20 Calc. 385

10.—*Civil Procedure Code (Act XIV of 1882), s. 43—Cause of action, splitting of—Onus of proof.*] Where a plaintiff has sustained at the same time an injury in respect of his proprietary or permanent interest in an estate, and also an injury in respect of a temporary or leasehold interest in such estate, and files suits for redress in both causes of action, it cannot be said that the two causes of action are so identical that he is precluded by s. 43 of the Civil Procedure Code from filing separate suits. The *onus* is on the defendant to show that the causes of action are identical. UPENDRA LAL MUKERJEE *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 20 Calc. 716

11.—*Civil Procedure Code, 1882, s. 43—Mahomedan law—Succession of a Mahomedan widow by local custom to a life-interest in the estate of her husband—Cause of action in her suit for dower distinguished from that in her suit for such estate.*] A decree in a suit brought by a Mahomedan widow against the brother of her deceased husband, declaring her right to possess for life the estate of the latter in accordance with a proved local custom, with an order for possession, was affirmed. A decree in a suit previously brought by the widow against the same defendant for her dower, gave no occasion for the application of s. 43 of the Civil Procedure Code, having been made upon a cause of action distinct from that on which the present suit was founded. *Raja of Pittapur* v. *Venkata Mahipati Suryu*, I. L. R. 8 Mad. 520; L. R 12 I. A. 119, referred to and followed. MAHOMED RIASAT ALI *v.* HASIN BANU.

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REMAND. *Col.*

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REMAND—*continued.*

(1) POWER OF REMAND.

1.—*Civil Procedure Code, ss.* 562, 564—*Illegality of remand in contravention of s.* 564—*Construction of statutes—Distinction between affirmative commands and negative prohibitions — Irregularities and illegalities.*] Where a Court of First Instance decided a suit, not upon a preliminary point so as to exclude any evidence of facts, but upon the merits, and upon all the evidence tendered and issues framed,—*held* by the Full Bench that, with reference to ss. 562, 564 of the Civil Procedure Code, the lower Appellate Court had no jurisdiction to remand the case under the former section, and that both the remand order and all proceedings subsequent thereto were *ultra vires* and illegal. As a principle of the interpretation of statutes, a distinction must be drawn between cases in which a Court or an official omits to do something which a statute enacts shall be done, and cases in which a Court or an official does something which a statute enacts shall not be done. In the former case, the omission may not amount to more than an irregularity in procedure. In the latter, the doing of the prohibited thing is *ultra vires* and illegal, and therefore without jurisdiction. RAMESHUR SINGH *v.* SHEODIN SINGH.

[I. L. R. 12 All. 510

2.—*Civil Procedure Code, s.* 562—*Civil Procedure Code Amendment Act* (*VII of* 1888), *s.* 49—*Power of Appellate Court to remand suit—"Preliminary point."*] It is competent for an Appellate Court to remand a case when the Court of First Instance records evidence on all the issues, and at the final hearing decides the suit erroneously on some particular point without expressing any opinion on the other issues. RAMACHANDRA JOISHI *v.* HAZI KASSIM.

[I. L. R. 16 Mad. 207

3.—*Civil Procedure Code,* 1882, *ss.* 562, 568, 569.] The defendant in a suit on a mortgage applied, on the day fixed for the hearing, for an adjournment on the ground of illness. Her application was refused, and the Court heard the case *ex-parte* and passed a decree for the plaintiff. The defendant appealed to the District Judge, who reversed the decree and remanded the case, on the ground that the defendant's application for an adjournment ought to heve been granted. On appeal to the High Court:—*Held*, discharging the order of remand, that the suit having been tried on the merits, the District Judge could not remand the case under s. 562, but ought to have proceeded under ss. 568, 569. PARVATISHANKAR DURGASHANKAR *v.* BAI NAVAL.

[I. L. R. 17 Bom. 733

4.—*Power of an Appellate Court to remand for decision upon evidence — Civil Procedure Code, Chs. XLI, XLII, ss.* 540—587.] The sections in Chs. XLI and XLII, Civil Procedure Code, relating to the hearing of appeals, provide the only powers that can be exercised by an Appellate Court in remanding a suit for the consideration of evidence

REMAND—*continued.*

(1) POWER OF REMAND—*concluded.*

by the Court from which the appeal is preferred. VENKATA VARATHA THATHA CHARIAR *v.* ANANTHA CHARIAR.

[I. L. R. 16 Mad. 299

(2) PROCEDURE ON REMAND.

5.—*Civil Procedure Code, s.* 506—*Power of Court to which remand is made—Remand for decision of particular issues.*] When a case is remanded, under s. 566 of the Code of Civil Procedure, to the lower Appellate Court for findings on certain issues, it is not competent to that Court to delegate the decision of those issues to a Court subordinate thereto. SABRI *v.* GANESHI.

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(3) CASES OF APPEAL AFTER REMAND.

6.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 562—*Remand order—Power of the High Court to go into the merits on appeal from a remand order.*] The Court of First Instance dismissed a suit as barred by limitation. In appeal, that decision was reversed, and the case was remanded under s. 562 of the Civil Procedure Code (Act XIV of 1882). Against the order of remand the defendant appealed to the High Court under cl. 28 of s. 588 of the Civil Procedure Code. It was contended by the plaintiff that the High Court had no power to decide the point of limitation, but could only consider whether the order of remand satisfied the requirements of s. 562 of the Civil Procedure Code:—*Held*, by the Full Bench that in an appeal against such an order of remand the power of the High Court is not confined to the question whether that order satisfies the requirements of s. 562; but may also determine the correctness of the lower Appellate Court's decision on the preliminary point on which the Court of First Instance disposed of the case. *Badam* v. *Imrat*, I. L. R. 3 All. 675, followed. BHAU BALA *v.* BAPAJI BAPUJI.

[I. L. R. 14 Bom. 14

7.—*Civil Procedure Code,* 1882, *ss.* 588, 590—*Remand order—Objections to its validity taken in appeal against final decree—Omission to appeal from the order.*] A party aggrieved by an interlocutory order of remand may object to its validity in his appeal against the final decree, though he might have appealed against the order under s. 588 of the Civil Procedure Code (Act XIV of 1882), and has not done so. SAVITRI *v.* RAMJI.

[I. L. R. 14 Bom. 232

8.—*Civil Procedure Code, ss.* 588 (28), 591—*Remand illegal where in contravention of s.* 564—*Omission to appeal from remand order—Objection to order allowed on appeal from final decree.*] Where a Court of First Instance decided a suit, not upon a preliminary point so as to exclude any evidence of facts, but upon the merits, and upon all the evidence tendered and issues framed:—*Held* by the Full Bench that, with reference to ss. 562, 564 of the Civil Procedure Code, the lower

REMAND—*concluded.*

(3) CASES OF APPEAL AFTER REMAND—*concluded.*

Appellate Court had no jurisdiction to remand the case under the former section, and that both the remand order and all proceedings subsequent thereto were *ultra vires* and illegal. *Held*, further, that the legality of the remand order and the subsequent proceedings could, under s. 591 of the Code, be questioned in second appeal from the decree in the suit, though no appeal had been preferred against the order itself under s. 588, cl. 28. RAMESHUR SINGH *v.* SHEODIN SINGH.

[I. L. R. 12 All. 510

9.—*Practice—Appeal from remand order—Civil Procedure Code (Act XIV of 1882), ss. 562, 588, cl. 28.*] Upon an appeal under cl. 28 of s. 588 of the Civil Procedure Code, against an order of remand under s. 562, the High Court is not restricted to the consideration of the form of the order, but may examine it on its merits. Where an Appellate Court passed an order under s. 562, remanding a case which had been disposed of in the Court of First Instance upon points, which were not preliminary points, but points directed to the merits of the case, the High Court on appeal set aside the remand order, directing the lower Appellate Court to hear the appeal according to law. ABRAHIM KHAN *v.* FAIZUNNESSA BIBI. ABRAHIM KHAN *v.* KHAIRUNNESSA BIBI.

[I. L. R. 17 Calc. 168

10.—*Civil Procedure Code, ss. 562, 591—Objection to previous order in the case—Such objection to be taken in memorandum of appeal.*] Unless such objection is taken in his memorandum of appeal, it is not open to an appellant at the hearing of an appeal from the decree to question the validity of an order of remand previously made in the case under s. 562 of the Code of Civil Procedure. TILAK RAJ SINGH *v.* CHAKARDHARI SINGH.

[I. L. R. 15 All. 119

11.—*Civil Procedure Code, s. 562—Appeal from order of remand—Effect of findings of facts and findings of law.*] On an appeal from an order of remand under s. 562 of the Code of Civil Procedure, the High Court is bound to accept the findings of fact of the Court which made the remand, that Court being a Court of first appeal, provided that there is evidence to support them; but where the High Court has decided a question of law in an appeal from an order under s. 562 of the Code, that decision of the question of law will be final for all purposes in the suit and in any appeal which may subsequently be made to the High Court. *Deo Kishen* v. *Bansi*, I. L. R. 8 All. 172, referred to. GAURI SHANKAR *v.* KARIMA BIBI.

[I. L. R. 15 All. 413

RENT.

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[I. L. R. 17 Calc. 726

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[I. L. R. 17 Calc. 301

——, Deposit of.

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See BENGAL TENANCY ACT, S. 111.

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RENT—*concluded.*

——, Rate of—*concluded.*

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See RES JUDICATA — ESTOPPEL BY JUDGMENT.

[I. L. R. 19 Calc. 656
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[I. L. R. 21 Calc. 236

——, Settlement of—

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——, Suit for—

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REPRESENTATIVE OF DECEASED PERSON.

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[I. L. R. 13 All. 290

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REPRESENTATIVE OF DECEASED PERSON—*continued.*

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[I. L. R. 15 Bom. 145

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[I. L. R. 15 Bom. 145

See SALE IN EXECUTION OF DECREE— INVALID SALES—DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

[I. L. R. 12 All. 440

1.—*Succession Act* (*X of* 1865), *s.* 187—*Hindu Wills Act* (*XXI of* 1870), *s.* 2—*Estate of deceased Hindu—Legal representative—Right of suit.*] A Hindu, who was one of the defendants in a suit, died leaving a will. The executors appointed by the will did not take out probate; and the property of the deceased came into the possession of his divided brothers, who were thereupon brought on to the record of the suit as the representatives of the deceased defendant. A decree was passed for the plaintiff by consent. The mother of the deceased who would, apart from the will, have been his legal representative, then sued to set aside the above decree, having previously obtained a declaration that she was entitled to the property of the deceased in the suit against his brothers above referred to:—*Held*, that the plaintiff was not entitled to maintain the suit. JANAKI *v.* DHANU LALL.

[I. L. R. 14 Mad. 454

2.—*Certificate under Act XXVII of* 1860—*Suit to set aside certificate granted by the Resident at Cochin—Jurisdiction—Foreign Court—Right of suit.*] Defendant 1, who was domiciled in the Native State of Cochin, obtained from the Resident a certificate to collect the debts of the deceased *karnavan* of the plaintiff's *tarwad*. The plaintiff, whose domicile was the same as that of defendant 1, then sued in British Cochin for a declaration of his right to receive the interest accrued due on certain Government promissory notes, being the property of his deceased *karnavan*:—*Held*, that the suit did not lie, and that the appellant should either have established his representative right by suit in the Court of

REPRESENTATIVE OF DECEASED PERSON—*concluded.*

Native Cochin and then applied to the Resident for a certificate, or have brought his action against the Government of India, joining defendant 1 as a party to such action. AMMUNNI *v.* KRISHNA.

[I. L. R. 16 Mad. 405

3.—*Decree for maintenance obtained by wife against her husband Appeal by husband against decree—Death of wife pending appeal—Legal representative of the deceased for the purpose of the appeal.*] A Hindu wife obtained a decree against her husband for maintenance. He appealed, and while the appeal was pending, the wife died, leaving two daughters. The question then arose whether her husband or his daughters should represent the deceased in the appeal:—*Held*, that the daughters of the deceased were the legal representatives for the purposes of the appeal. MANILAL REWADAT *v.* BAI REWA.

[I. L. R. 17 Bom. 758

RE-SALE.

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RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

See LIMITATION ACT, 1877, ART. 167.

[I. L. R. 13 Mad. 504

See LIMITATION ACT, 1877, ART. 179—PERIOD FROM WHICH LIMITATION RUNS—CONTINUOUS PROCEEDINGS.

[I. L. R. 16 Bom. 294

See MAMLATDARS COURTS ACT, S. 17.

[I. L. R. 14 Bom. 157

See PENAL CODE, S. 183.

[I. L. R. 15 Bom. 564

1.—*Civil Procedure Code (Act XIV of 1882), s. 331—Investigation under that section—Question of possession—Question of title.*] The investigation of claims under s. 331 of the Code of Civil Procedure (Act XIV of 1882) is not limited to the fact of possession. Any question of title arising between the contending parties in connection with

RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE—*concluded.*

their right of possession may be finally determined in such investigation as in an ordinary action of ejectment. MOULAKHAN *v.* GORIKHAN.

[I. L. R. 14 Bom. 627

2.—*Civil Procedure Code, ss.* 13. 278, 331—*Munsif, jurisdiction of.*] The plaintiff, having obtained a decree for possession of certain land, applied for execution by delivery of possession. Whereupon a third party filed an objection, in the Court of the Munsif, that he held a prior decree for possession of the same land and therefore the plaintiff's decree was incapable of execution. This objection was allowed and the plaintiff then sued for establishment of his right to possession of the land jointly with the objector, making the former judgment-debtor and the objector defendants to the suit. The Subordinate Judge in first appeal held that the Munsif had acted under s. 331 of the Code of Civil Procedure, and, applying s. 13 of the same Code, dismissed the plaintiff's suit. The plaintiff then appealed:—*Held*, that circumstances did not exist to give the Munsif jurisdiction to act under s. 331, and that his order must be taken to have been made, as it purported to have been made, under s. 278. *Buhal Singh Chowdhry* v. *Behari Lal*, 1 B. L. R. A. C. 206, referred to. The scope and application of s 331 of the Civil Procedure Code, commented upon. MAHABIR PRASAD *v.* PARMA.

[I. L. R 14 All. 417

3.—*Civil Procedure Code, ss.* 328, 331—*Obstruction offered by a tenant—Decree for partition—Possession, decree for.*] Obstruction was offered to the execution of a decree for partition of certain property, by a person claiming to be entitled to occupy part of the land in question as a *mulgeni* tenant. The decree-holder presented a petition to the Court under the Civil Procedure Code, s. 328: this petition was rejected and the claim was not numbered and registered as a suit:—*Held*, that the decree for partition was a decree for possession of property within the meaning of the Civil Procedure Code, s. 328; and that that section was not rendered inapplicable by the fact that the obstructor claimed to be a *mulgeni* tenant. GOPALA *v.* FERNANDES.

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[I. L. R. 15 Mad. 6

(1) ESTOPPEL BY JUDGMENT.

1.—*Civil Procedure Code, s.* 13—*Partition suit—Declaratory decree.*] A suit for partition of certain land was withdrawn as against one of the defendants who was entitled to part of the land. The plaintiff and the remaining defendants entered into a compromise in the terms of which the Court passed a decree for delivery of a share of the land to the plaintiff. The decree-holder having died without executing the decree, his heir now sued for partition of the land and delivery of the above share, joining as defendants the various persons entitled to shares:—*Held*, that the decree in the former suit could only operate as a declaratory decree, and did not preclude the plaintiff from bringing the present suit. BEEMABAI *v.* YAMUNABAI.

[I. L. R. 13 Mad. 313

2.—*Civil Procedure Code, ss.* 13 *and* 43—*Landlord and tenant—Service-tenure with rent—Enhancement of rent—Resumption.*] In a suit brought in 1886 by a zemindar to recover an estate granted by his predecessor to the predecessor of the defendant on a service tenure, a small money-rent being also reserved, it appeared that in 1864 the right of the plaintiff's predecessor to rent had been established by suit, but there was no evidence that the service was then dispensed with, but in 1885, it was intimated to the defendant that the service was dispensed with, and a notice to quit was given to him; the option of holding the estate at an enhanced rent was, however, given to him at the same time:—*Held*, that the suit was not precluded by the Civil Procedure Code, s. 13 or s 43. MAHADEVI *v.* VIKRAMA.

[I. L. R. 14 Mad. 365

3.—*Civil Procedure Code, ss.* 13 *and* 43.] The dismissal of a suit to have set aside an order made in one district, for the sale of the plaintiff's interest in property therein, is not a bar under

RES JUDICATA—*continued.*

(1) ESTOPPEL BY JUDGMENT—*continued.*

ss. 13 and 43 of the Civil Procedure Code to another suit to obtain relief against an order in another district for the sale of property thereni belonging to the same plaintiff, or of other property not included in the order for sale against which the dismissed suit was directed. RADHA PRASAD SINGH *v.* LAL SAHAB RAI.

[I. L. R. 13 All. 53
[L. R. 17 I. A. 150

4.—*Judgment in rem—Decision of Court as to construction of will and ordering grant of letters of administration—Probate and Administration Act (V of* 1881), *ss.* 19 *and* 59—*Evidence Act (I of* 1872), *s.* 41.] The High Court of the North-Western Provinces on the 2nd February 1890, in determining under s. 19 of Act V of 1881 the question whether certain persons were entitled to letters of administration with the will annexed, construed the testator's will; and finding that the applicants were residuary legatees under the will, held that they were entitled to such letters of administration. The widow of the testator, who had unsuccessfully opposed the grant in the Court of the North-Western Provinces, then filed a suit in the Court of the Subordinate Judge of the 24-Parganas for, amongst other things, the construction of her late husband's will:—*Held*, on appeal in such suit, that the application for letters of administration was not a suit properly so called, and that the finding on the construction of the will by the Court of the North-Western Provinces, being incidental and for the purpose of determining the question of the representative title of the applicants, could not be regarded as concluding the plaintiff by *res judicata* from obtaining a construction of the will in the suit brought by her. ARUNMOYI DASI *v.* MOHENDRA NATH WADADAR.

[I. L. R. 20 Calc. 888

5.—*Suit by reversioners—Former suit by widow—Suit for construction of will.*] A suit by reversioners after the death of the widow of a testator for the construction of his will and codicil and for a declaration of the plaintiff's rights was held under the circumstances of the case not to be barred, as being *res judicata*, by the dismissal of a former suit which had been brought by the widow claiming the estate on the ground that the will and codicil were forgeries, and in which they were found to be genuine. CHUKKUN LAL ROY *v.* LOLIT MOHAN ROY.

[I. L. R. 20 Calc. 906

6.—*Evidence Act (I of* 1872), *s.* 41—*Judgment in rem—Judgment in personam—Guardians and Wards Act (VIII of* 1890), *s.* 48—*Probate and Administration Act (V of* 1881), *s.* 62.] On an application for probate of a will under the Probate and Administration Act, 1881, which was opposed by the widow of the alleged testator and her father, it appeared that an application had previously been made under the Guardians and Wards Act, 1890, on behalf of the widow for a

RES JUDICATA—*continued.*

(1) ESTOPPEL BY JUDGMENT—*continued.*

declaration that she was the guardian of the person and the property of the infant son of the alleged testator, and that that application had been opposed by the present petitioners who claimed to be testamentary guardians of the property appointed by the will now propounded, and that the will had then been found to be a forgery:—*Held*, that the question of the genuineness of the will was not *res judicata* for the purpose of the proceedings under the Probate and Administration Act. CHINNASAMI *v.* HARIHARABADRA.

[I. L. R. 16 Mad. 380

7.—*Agreement not to execute regarded as satisfaction of decree—Civil Procedure Code (Act XIV of 1882), s. 13.*] *M* and *A* were partners, and as such were indebted to *H*. *A* died, and subsequently the debt was settled between *H* on one side and *M* and *A's* widow, as guardian of her minor sons, on the other. For a moiety of the debt a bond was passed by *M* to *H* and for the other moiety by the widow of *A*. *H* filed a suit against *M* and got a decree, which was satisfied. *H* then sued the widow on her bond. The Court allowed her objection that she was not competent to give a bond binding her sons personally, and of its own accord made *M* a defendant, and passed a decree against *M* and *A's* estate. *H* assigned this decree to *R*, who applied for execution against *M*. *M* thereupon filed this suit against *H* and *R* praying for an injunction against the execution of the said decree and for damages against *H*. He alleged that during the pendency of the suit in which the said decree had been passed, *H* had agreed that he would not obtain a decree against him, and that, if such a decree were passed, he would not execute it. The lower Appeal Court rejected the plaint, holding (1) that as between the plaintiff *M* and the defendant *R* the question in issue was *res judicata*, and (2) that there was no cause of action against the defendant *H*. On appeal to the High Court, *held* that, as between *M* and *R*, the suit was not *res judicata*. The alleged agreement by its very terms provided for the event of the decree being passed, and was only intended to prevent its being executed. *Chenvirappa* v. *Puttappa*, I. L. R. 11 Bom. 708, distinguished. MUKUND HARSHET *v.* HARIDAS KHEMJI.

[I. L. R. 17 Bom. 23

8.—*Execution of decree—Mesne profits, ascertainment of—Deductions claimed.*] The Court having awarded a particular sum as annual mesne profits without setting forth in the judgment the details thereof, and it having, therefore, become impossible to say that the right to a particular deduction therefrom claimed by the defendant was adjudicated on by the Court, *held*, that the rule of *res judicata* did not apply to the question as to the payment by the defendant. KACHAR ALA CHELA *v.* OGHADBHAI THAKARSHI; OGHADBHAI THAKARSHI *v.* KACHAR ALI CHELA.

[I. L. R. 17 Bom. 35

RES JUDICATA—*continued.*

(1) ESTOPPEL BY JUDGMENT—*continued.*

9.—*Civil Procedure Code, s. 13—Soundness in law of previous decision immaterial.*] Where a judicial decision pleaded as constituting *res judicata*, in all other respects fulfils the requirements of s. 13 of the Code of Civil Procedure, and no appeal has been preferred against it within limitation, it is immaterial whether such decision is or is not sound law. *Parthasaradi Ayyangar* v. *Chinnakrishna Ayyangar*, I. L. R. 5 Mad. 304, dissented from. PHUNDO *v.* JANGI NATH.

[I. L. R. 15 All. 327

10.—*Bengal Municipal Act (Bengal Act III of 1864), s. 10—Public highways—Roads vesting in Commissioners—Subsoil of roads, right to—Civil Procedure Code (Act XIV of 1882), s. 13.*] A suit brought by the plaintiffs' predecessor in title to recover certain land from a Municipality (which had been taken up as a public road and vested in the Municipality subsequently under Bengal Act III of 1864, s. 10), on the ground that the plaintiffs had been ousted therefrom by reason of the Municipality stacking stones on a portion thereof, having been dismissed:—*Held*, that the decision in such suit was not operative as *res judicata* in another suit brought by the plaintiffs for ejectment and declaration of title to such land against a purchaser of the land from the Municipality. MODHU SUDAN KUNDU *v.* PROMODA NATH ROY.

[I. L. R. 20 Calc. 732

11.—*Rent, suit for—Decree as to rent payable for former year—Rate of rent payable—Decree on admission of defendant.*] The plaintiff, in a suit for rent which was contested, having failed to prove that the rent was payable at the rate claimed by him, the Court, in trying the issue "what is the amount of the *jama*," after considering the whole of the evidence and the circumstances of the case, held that the plaintiff had entirely failed to prove his allegation of the *jama*, and gave him a decree for the amount admitted by the defendant, which was less than that claimed by the plaintiff. In a later suit the plaintiff sued the defendant, in respect of the same holding, for rent for a subsequent year, and he claimed at the same rate as he had claimed in his previous suit. It was contended on behalf of the defendant that the question as to the rate at which the rent was payable was *res judicata*, it not being alleged that there had been any agreement subsequent to the first suit by which the rate was altered:—*Held*, that the question as to the rent payable for the period covered by the first suit was *res judicata*; but that it did not follow that the decree in that suit operated as *res judicata*, and conclusively determined the rate of the rent payable for the year in respect of which the subsequent suit was brought. That depended on whether the previous decision was that the plaintiff should recover from the defendant the sum admitted by him to be due, or that the sum so admitted to be due was the proper amount of rent payable for the period in question. *Held*, that in this case the previous decision was to

RES JUDICATA—*continued.*

(1) ESTOPPEL BY JUDGMENT—*concluded.*

the latter effect, and that the question of the rate at which the rent was payable by the defendant was *res judicata*. *Punnoo Singh* v. *Nirghin Singh*, I. L. R. 7 Calc. 298, and *Jeo Lal Singh* v. *Surfun*, 11 C. L. R. 483, referred to. HURRY BEHARI BHAGAT *v.* PARGUN AHIR.

[I. L. R. 19 Calc. 656

12.—*Rent, suit for—Decree as to rent payable for former years—Evidence of rent payable.*] The plaintiffs sued the defendants for rent of a certain *jote* claiming a higher rent than the defendants admitted. The High Court in second appeal gave a decree at the lesser rate admitted by the defendants. Subsequently the plaintiffs again sued the defendants in regard to the same *jote* for arrears of rent for subsequent years at the rate claimed in the former suit. The defendants contended that the rate of the rent as regards this *jote* was, by virtue of the judgment of the High Court in the previous suit, *res judicata* as between themselves and the plaintiff:—*Held*, that where in a rent suit a Judge tries the question and gives judgment on the question "what is the yearly rent," and makes that the foundation of his judgment, that decision is *res judicata* between the parties. The previous judgment of the High Court, therefore, operated as *res judicata*. *Hurry Behari Bhagat* v. *Pargun Ahir*, I. L. R. 19 Calc. 656, followed. *Per* NORRIS, J.—Even if the judgment of the High Court did not operate as *res judicata*, still it was some evidence of the rate of the rent of the previous year. BUKSHI *v.* NIZAMUDDI.

[I. L. R. 20 Calc. 505

13.—*Rent, suit for—Decree as to amount of land—Rent payable for former years—Rate of rent payable.*] The plaintiff sued the defendant for rent of certain lands. The defendant contended that he was not liable for the entire rent, as part of the land was in the plaintiff's possession. The defendant failed to prove his contention, and a decree was given for the full amount claimed. Subsequently the plaintiff again sued the defendant in regard to the same property for arrears of rent for subsequent years at the rate claimed in the former suit. The defendant had the land measured, adduced evidence, and endeavoured to raise the same defence as he had in the previous suit. No allegation was made to the effect that the rent had been altered in consequence of anything that had happened since the previous decision. The lower Courts, without considering the evidence adduced by the defendant, held that the defendant could not again raise the same contention, as the question had already been considered and determined in the previous suit, and was *res judicata* between the parties:—*Held*, that the previous decision did not operate as *res judicata*, and that the lower Courts ought to have determined on the evidence adduced what the amount of rent in question was. NIL MADHUB SARKAR *v.* BROJO NATH SINGHA.

[I. L. R. 21 Calc. 236

RES JUDICATA—*continued.*

(2) ADJUDICATIONS.

14.—*Award—Refusal to file award—Civil Procedure Code*, 1882, *ss.* 13 *and* 525.] The refusal of an application for the filling of an award, under s. 525, Civil Procedure Code, merely leaves the award to have its own ordinary legal effect, and it cannot be contended that an award is not to be relied on as a defence in a suit relating to the subject-matter dealt with by it, only because such an application has not been granted. Separable claims, *viz.*, (*a*) to share property by right of inheritance, and (*b*) for the office of *lumberdar*, had been disposed of, on the reference of the present parties, without the intervention of a Court by an arbitrator's award between them. An application under s. 525 had been rejected, for the reason, among others, that (*b*) was not a matter of civil jurisdiction:—*Held*, however, that the present suit, which was grounded on (*a*), was barred by the award made. MUHAMMAD NEWAZ KHAN *v.* ALAM KHAN.

[I. L. R. 18 Calc 414
[L. R. 18 I. A. 73

(3) JUDGMENTS ON PRELIMINARY POINTS.

15.—*Civil Procedure Code* (*Act XIV of* 1882), *ss.* 13, 102, 158—*Dismissal for default in payment of Commissioner's fee.*] A suit for land was dismissed in 1886 on the plaintiff's failure to comply with an order to pay a fee for the appointment of a Commissioner to value the land. No issues were framed in the suit, and the order directing payment of the fee prescribed no time within which it was to be made. The plaintiff now sued the defendants again for the same land:—*Held*, that the claim was not *res judicata*. SHAIK SAHEB *v.* MAHOMED.

[I. L. R. 13 Mad. 510

16.—*Suit on a mortgage against several defendants—Dismissal of suit as against some of the defendants for want of jurisdiction—Subsequent suit on the mortgage against same defendants in another Court—Civil Procedure Code* (*XIV of* 1882), *ss.* 13, 43.] The plaintiff brought a suit in the High Court of Bombay (No. 169 of 1887) against three defendants on a mortgage executed at Surat of certain property situated there. The second and third defendants in that suit (the defendants in the present suit), who were inhabitants of Surat, pleaded that as against them the Court had no jurisdiction. The suit was accordingly dismissed as against them for want of jurisdiction, but as against the first defendant, who resided in Bombay, the Court passed a decree for the plaintiff. The plaintiff then brought the present suit against the defendants in the Surat Court to enforce their liability under the mortgage. The defendants pleaded that the claim against them was barred by the dismissal of the former suit:—*Held*, that the suit was not barred, In the former suit there had been as against these defendants no decision on the merits, and the proceedings against them were a nullity. BHUKANDAS VIJBHUKANDAS *v.* LALLUBHAI KASHIDAS.

[I. L. R. 17 Bom. 562

RES JUDICATA—*continued.*

(3) JUDGMENTS ON PRELIMINARY POINTS —*continued.*

17.—*Dismissal of first application for non-appearance and want of prosecution.*] Where on an application being made for execution of a conditional decree, the judgment-debtor did not appear to oppose the decree-holder's application for attachment and sale, but the application was dismissed for default of prosecution:—*Held*, on a subsequent application for execution, that as the question whether the conditional decree was capable of execution before it was made absolute was never before in issue, and was not judicially treated on the occasion of the former application, there was no *res judicata* on the point. RAM LAL *v.* NARAIN.

[I. L. R. 12 All. 539

18.—*Dismissal for non-payment of Court-fees.*] The dismissal of a suit for non-payment of Court-fees is no bar to a subsequent suit in which the relief sought is substantially the same. NAGATHAL *v.* PONNUSAMI.

[I. L. R. 13 Mad. 44

19.—*Civil Procedure Code, ss.* 158 *and* 647—*Civil Procedure Amendment Act* (*Act VI of* 1892), *s.* 4—*Application for execution struck off in consequence of non-payment of talbana—Subsequent application for execution.*] An application for execution of a decree by attachment of immoveable property having been presented by a decree-holder, the Court executing the decree ordered that the costs of such attachment should be deposited by the decree-holder on or before a certain specified date. The costs of attachment were not deposited by the day named in the order above referred to, and the Court thereupon passed the following order:—"This case came on for hearing to-day: as the decree-holder has not deposited the costs of attachment, &c., therefore it is ordered that the case be struck off for default:" —*Held*, that whether this second order was an order under *s.* 158 of the Code of Civil Procedure deciding the application for attachment, or whether its effect was merely to remove the application from the file of pending applications without deciding it, in either case no fresh application (being of a precisely similar nature) was entertainable, though in the latter case, possibly the former application might be renewed. PHEKU *v.* PIRTHI PAL SINGH.

[I. L. R. 15 All. 49

20.—*Striking off of execution-proceedings.*] *Per* EDGE, C. J., TYRRELL, KNOX, BLAIR, BURKITT and AIKMAN, JJ.—When an order striking an execution-case off the file of pending cases, or dismissing it on grounds other than a distinct finding that the decree is incapable of execution, that the decree-holder's right to get the decree executed is barred by limitation, or by any other rule of law, or on some similar ground on which the application has clearly been dismissed on the merits, whether the word "dismissed" or the words "struck off the file," or any other similar words have been used in the order, the decree-holder is not barred by the force of any such

RES JUDICATA—*continued.*

(3) JUDGMENTS ON PRELIMINARY POINTS —*concluded.*

order from presenting and prosecuting a fresh application for the execution of his decree. DHONKAL SINGH *v.* PHAKKAR SINGH.

[I. L. R. 15 All. 84

(4) ORDERS IN EXECUTION OF DECREE.

21.—*Principle of res judicata as applied to execution-proceedings—Civil Procedure Code, s.* 373.] Where a judgment-debtor, being entitled and having an opportunity to plead *s.* 373 of the Code of Civil Procedure as a bar to execution of the decree against him neglects to do so, and the application in respect of which such objection might have been taken is entertained by the Court and orders passed thereon, the principle of *res judicata* will apply to such proceedings, and the judgment-debtor cannot at a subsequent stage of the same execution-proceedings object that such previous application for execution ought, in fact, to have been held to be barred by the operation of *s.* 373 above-mentioned. SHER SINGH *v.* DAYA RAM.

[I. L. R. 13 All. 564

See KISHAN SAHAI *v.* ALADAD KHAN.

[I. L. R. 14 All. 64

22.—*Orders disallowing objection to party representative—Civil Procedure Code* (*Act, XIV of* 1882), *ss.* 13 *and* 244.] *G* brought a suit against *I* for the establishment of her rights as purchaser of certain immoveable properties sold in execution of a decree obtained against *I*, and for possession of the same. After the settlement of issues but before the suit was finally disposed of, *I* died, and his brother *J* was made defendant as his legal representative. *J* consented to the suit being tried on the defence raised by *I*, and upon the issues already settled. The suit was decreed, it being held that *G* was the purchaser. In execution of this decree, in which *G* sought to obtain possession, *J* objected that he was entitled to a half share of some and to the entire sixteen-annas of the other properties, and that his brother *I* had no right whatever in the same. This objection was disallowed by the Court executing the decree on the ground that it had not been raised in the original suit, and that, as the decree had been passed in the presence of the party then objecting, he was not entitled to urge it. Thereupon *J* brought a suit against *G* to establish his rights. The defence was that the order passed in the execution-proceedings, disallowing the plaintiff's objection, was a bar to the suit under *s.* 13 and *s.* 244 of the Civil Procedure Code:—*Held*, that the order disallowing the plaintiff's objection did not operate as *res judicata* under *s.* 13 of the Civil Procedure Code. *The Delhi and London Bank v. Orchard*, I. L. R. 3 Calc. 47; L. R. 4 I. A. 127, relied on. *Held*, also, that this order was no bar to the suit under *s.* 244 of the Civil Procedure Code. *Kanai Lall Khan v. Shashi Bhosun Biswas*, I. L. R. 6 Calc. 777; 8 C. L. R. 117, followed. GOURMONI DABEE *v.* JUGUT CHANDRA AUDHIKARI.

[I. L. R. 17 Calc. 57

RES JUDICATA—*continued.*

(4) ORDERS IN EXECUTION OF DECREE—*concluded.*

23.—*Sale of two plots of land by one sale-deed—Validity of deed questioned in dispute as to one of the plots—Order in execution-proceedings that deed was valid—Subsequent dispute as to second plot included in deed—Question of validity of deed again raised—Orders in execution-proceedings, how far final—Civil Procedure Code (Act XIV of 1882), ss. 13 and 283.*] The plaintiff purchased two distinct plots of land (A and B) from one *G* by a deed of sale dated 30th September 1875. In 1884, in execution of a decree against *G*. plot A was attached and sold as his property, and purchased by the defendant. The plaintiff did not intervene, and at that time took no steps to establish his alleged right to this land. In 1885 the defendant obtained another decree against *G*, and in execution attached plot B. The plaintiff intervened, and claimed the property attached as his own under the sale-deed of 30th December 1875. The defendant disputed the sale, but the Court found in favour of the validity of the sale-deed, and allowed the plaintiff's claim. The defendant did not file a suit to set aside this order. The plaintiff then filed a suit to establish his title to plot A, relying on his sale-deed of the 30th December 1875. The defendant again disputed the sale, pleading that it was a colourable and fictitious transaction:—*Held*, that the order in the execution-proceeding did not operate as *res judicata*, and did not estop the defendant from contesting the validity of the sale-deed in the present suit. *Per* JARDINE, *J.*:—*If* the decision as to the validity of the deed had been a final decision in a suit as distinguished from an execution-proceeding, it would have created an estoppel by *res judicata*. Between the parties the orders to which s. 283 of the Civil Procedure Code refers are, subject to the result of a suit, if any, conclusive, but this conclusiveness exists only as regards the particular property in dispute. DINKAR BALLAL CHAKRADEV *v.* HARI SHRIDHAR APTE.

[I. L. R. 14 Bom. 206

(5) CAUSE OF ACTION.

24.—*Suit to compel execution of release from document—Suit to declare document executed for nominal purpose.*] On 23rd March 1878 plaintiff executed to defendant a document purporting to be a deed of gift. In 1886 plaintiff sued to cancel the document alleging that defendant on 11th May 1881 had agreed to execute a release, but had not done so; that suit was dismissed for non-payment of duty due under the Court-Fees Act. The plaintiff now sued in 1887 for a declaration that the document "was executed for nominal purposes and was not intended to take effect:"—*Held*, that since the cause of action in the suits of 1886 and 1887 were not the same, the claim in the latter suit was not *res judicata*. NAGATHAL *v.* PONNUSAMI.

[I. L. R. 13 Mad. 44

25.—*Suit for personal decree against some members of tarwad—Subsequent suit against tarwad for mortgage-debt.*] A suit seeking to enforce

RES JUDICATA—*continued.*

(5) CAUSE OF ACTION—*continued.*

liability for a mortgage-debt on a Malabar *tarwad* is not barred by a previous personal decree obtained against certain members of the *tarwad* for the same debt. GOVINDA *v.* MANA VIKRAMAN. MANA VIKRAMAN *v.* GOVINDA.

[I. L. R. 14 Mad. 284

26—*Second redemption suit—Kanom, nature of—Transfer of Property Act, ss. 58, 67, 92, 93.*] The *jenmi* of land in Malabar sued in 1886 to redeem a *kanom* of 1849, to which it was subject, and obtained a decree which merely directed the surrender of the land to the plaintiff, on payment of the *kanom* amount and the value of improvements, within three months of the date of the decree. This decree remained unexecuted, the money not being paid. The *jenmi* now brought another suit to redeem the same *kanom*:—*Held*, that the present suit was not barred by the former decree. The nature of a *kanom* discussed. RAMUNNI *v.* BRAHMA DATTAN.

[I. L. R. 15 Mad. 366

27.—*First suit based on the general right of a co-parcener to claim partition of the joint estate—Refusal of Judge in first suit to allow plaint to be amended so as to include claim to partition based on an award—Second suit based on an award—Code of Civil Procedure (Act XIV of 1882), s. 13, Explanations I, II.*] In 1874 the plaintiffs' father filed a suit against the defendants for partition of joint family property. The subject-matter of the suit was referred to arbitration out of Court. The arbitrators made an award to the effect that partition should be postponed till the family debts were paid off. The award was accepted by all the sharers, and so the plaintiffs' father withdrew his suit. In 1880 the debts were paid off. Thereupon the plaintiffs' father demanded partition, but was refused. He therefore filed a partition suit in 1883 against the defendants. In his plaint he made no mention of the award of 1874, but relied on his right as a co-parcener to enforce partition. After the settlement of issues he applied for amendment of the plaint, so as to include his claim on the award. The Court refused the amendment, on the ground that it would materially alter the character of the suit, and dismissed the suit, as barred under s. 373 of the Code of Civil Procedure (Act XIV of 1882). Against this decision plaintiffs' father did not appeal. In 1884 the plaintiffs filed the present suit for partition, relying expressly on their title under the award of 1874:—*Held*, that the suit was not barred by the plea of *res judicata*. THAKORE BECHARJI RANAJI *v.* THAKORE PUJAJI VAKTAJI.

[I. L. R. 14 Bom. 31

28.—*Suit for declaration of right to partition—Decree not executed—subsequent suit for same purpose.*] Where a decree declaring a right to partition has not been given effect to by the parties proceeding to partition in accordance with it, and the decree has become, by lapse of time

RES JUDICATA—*continued.*

(5) CAUSE OF ACTION—*concluded.*

or otherwise, unenforcible, it is competent to the parties, or any of them, if they still continue to be interested in the joint property, to bring a fresh suit for a declaration of their right for partition. Such a suit will not be barred by reason of the former decree for partition, though that decree may operate as *res judicata* in respect of any claim or defence which was or might have been raised in the suit in which it was passed. NAZRAT-ULLAH *v.* MUJIB-ULLAH.

[I. L. R. 13 All. 309

29.—*Mortgage-deed passing possession of certain parcels of land and hypothecating others—Remedy of mortgagee—Previous decrees for rent obtained against mortgagors.*] The obligee under an instrument, dated 1878, by which certain land was usufructuarily mortgaged and other land merely hypothecated to him, having obtained against the mortgagors decrees for rent due on part of the land under the terms of *pattamchits* executed by them on the date of the mortgage, now sued to recover the principal and interest due under that instrument:—*Held*, that he was not precluded from obtaining a decree by reason of his previous suits, and was entitled to a decree for the amount due, and in default of payment for the sale of the mortgaged premises. NANU *v.* RAMAN.

[I. L. R. 16 Mad. 335

(6) MATTERS IN ISSUE.

30.—*Suit for ejectment—Plea of right of occupancy—Issue not finally decided.*] *A* as *ticcadar* brought a suit to eject *B* from certain lands which he claimed as *majhes* land or land which is ordinarily cultivated by the landlord himself or by the *ticcadar*. *B* pleaded his right of occupancy. The Court found that the land was *majhes* land, but dismissed the suit on the ground that *A* had failed to prove notice to quit. Afterwards *A* brought a suit against *B* for ejectment from the same land. *B* again pleaded his right of occupancy:—*Held*, that *B* was not precluded from raising the same plea, inasmuch as the finding in the previous suit upon the issue whether *B* was an occupancy-tenant was not conclusive against him: nor could that issue be said to have been "finally decided" in that suit within the meaning of s. 13 of the Civil Procedure Code. *Ran Bahadur Singh* v. *Lucho Koer*, I. L. R. 11 Calc. 301; and *Nundo Lall Bhuttacharjee* v. *Bidhoo Mookhy Debee*, I. L. R. 13 Calc. 17, relied on. THAKUR MAGUNDEO *v.* THAKUR MAHADEO SINGH.

[I. L. R. 18 Calc. 647

31.—*Claim in part included in former suit which was dismissed—Civil Procedure Code, ss.* 13, 42, 43, *and* 212—*Reference to pleadings and judgment to explain decree—Omission of portion of claim in former suit—Mesne profits—Oude Rent Act* (*XIV of* 1868), *s.* 111.] That a claim has been included in a previous suit, without its having been directly and substantially put in issue and decided, does not upon the dismissal of

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*continued.*

that suit preclude a subsequent suit upon it. A consent decree of 1873 decided that alluvial land belonged to the plaintiff's village Sipah. The area was judicially determined in 1876 on a map of 1874, but actual possession was not obtained from the defendant, who owned villages on the opposite side of the river. The decree-holder in 1877 included a claim for part of the same land in a suit for an accretion to another of his riparian villages, Khasapur, and the latter suit was wholly dismissed. To get possession of the land decreed in 1873, he then brought rent-suits against two tenants upon it, the defendant intervening under s. 111 of the Oudh Rent Act, 1868. Both the rent-suits were dismissed; and, according to the right reserved in the latter section, the plaintiff, to establish his title in a competent Court, brought the present suit, including in it the land which he had made part of his claim in the dismissed suit of 1877:—*Held*, on the question whether the dismissal of the suit of 1877 precluded a further suit for that part of the land which had been included in it, that it did not, and that s. 13 of the Civil Procedure Code was inapplicable. The pleadings and judgment in the suit of 1877 were referred to, showing that what belonged to Sipah had not been in issue, and that nothing respecting it had been heard or decided. *Held*, also, as to the rest of the land claimed in this suit, that there was no bar on account of its omission from the suit of 1877. As to mesne profits, it would have been open to the High Court to direct an enquiry under s. 212 of the Civil Procedure Code. JAGATJIT SINGH *v.* SARABJIT SINGH.

[I. L. R. 19 Calc. 159

[L. R. 18 I. A. 165

32.—*Suit for land identical with land given in previous decree—Proof of identity where decree did not specify boundaries—Long possession.*] The proprietary possession of alluvial land was claimed upon the averment that, having been gained as an accretion to the plaintiff's village, it had been wrongly excluded from settlement with the latter, in consequence of a prior decree, which, however, had not decreed the land to the defendants, as they alleged it to have done. In pursuance of that decree, which was made in 1865, the land had been, according to the evidence, taken by the defendants, in whose possession it was in 1868; from which date till 1883, when the present suit was brought, that land had been treated, alike by the Government authorities and by the defendants, as belonging to the latter. Had the question been one of limitation, the possession of the defendants for a period of twelve years would not have been sufficient to exclude this claim by the plaintiff, the Government, to recover whatever could have been shown to be its property. The question, however, was not one of limitation; and the fact of the possession having been retained for so long a period was used by the defendants, not to make a title, but to define or identify the land which the decree of 1865 had

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*continued.*

awarded to them. Although the specification of the boundaries (which had been merely by reference to the plaint which mentioned adjoining villages) had been ineffectual, the acts of the parties had been such as to fix the meaning of the terms used; and it was established by the evidence that the land now claimed was identical with that which had been made over under the decree of 1865, to which it related. SECRETARY OF STATE FOR INDIA *v.* DURBIJOY SINGH.

[I. L. R. 19 Calc. 312
[L. R. 19 I. A. 69

33.—*Civil Procedure Code, s.* 13—*Transfer of interest—Appointment of a creditor as agent to collect rents and appropriate part towards the debt.*] In a suit to redeem a *kanom* on certain land, the *jenm* of a *devasom* in Malabar, it appeared that the plaintiff held a *melkanom* in respect of the same land executed to him (subsequently to the date of the *kanom* sought to be redeemed) by defendant 3, the *samudayam* of the *devasom*. Defendant 3 represented one *C*, in whose favour the *uralers* had, in 1741, executed a document appointing him *samudayam*, and stating that they had received from him a *kanom* of 18,000 *fanams* on the *devasom* properties, and providing that he should appropriate part of the rents towards the loan. It appeared that in a suit to eject tenants, the *uralers* had sued as co-plaintiffs with the *samudayam*; in subsequent suits, however, two of the *uralers* had sued other tenants for rent and the *samudayam* for an account; both of these suits were dismissed on second appeal, and in the judgments of the High Court the *samudayam* was described as a mortgagee in possession:—*Held* (1) on its appearing that no opinion was expressed in the former suits as to the construction of the document of 1741, that the former decisions had not the force of *res judicata*; (2) in view of the conduct of the parties and on the terms of the document of 1741, that the *samudayam* was not thereby constituted a mortgagee in possession, and that the *melkanom* set up by the plaintiff was invalid. KRISHNAN *v.* VELOO.

[I. L. R. 14 Mad. 301

34.—*Civil Procedure Code, s.* 13—*Creditor of a devasom placed in possession as samudayam.*] In a suit brought by the *uralers* of a *devasom* in Malabar to recover certain land in the possession of the defendant, it appeared that the defendant held under an instrument, dated 1741, whereby his predecessor in title was appointed *samudayam*, and was authorised to appropriate part of the rents of the *devasom* properties to the interest on a loan made by him to the *uralers*. Two of these *uralers* had brought a previous suit against the defendant for an account of the rents received by him and for an injunction: that suit was dismissed on second appeal when the High Court described the defendant as a mortgagee in possession, but the question whether or not he was a mortgagee with or without possession was not then directly and substantially in issue:—*Held*, that the *status* of the defendant was not *res judicata*, by reason of the judgment in the previous suit. RAMAN *v.* SHATHANATHAN.

[I. L. R. 14 Mad. 312

35.—*Civil Procedure Code, ss.* 13, 43—*Matter which should have been ground of attack in former suit.*] The widow, daughter, and divided brother of a deceased Hindu, executed an instrument which provided for the distribution of his property, both moveable and immoveable, as to which they had disputed. The document was not registered. The widow set up a will made by the deceased in her favour: the brother sued the widow for a declaration that the will was a forgery, but the Court held that it was genuine. He now sued the widow and daughter on the above instrument to recover his agreed share of the moveable property of the deceased. The widow set up the will, which the plaintiff averred was invalid according to the custom governing the family:—*Held*, that the plaintiff was not precluded by the decree in the former suit from impugning the validity of the will. THANDAVAN *v.* VALLIAMMA.

[I. L. R. 15 Mad. 336

36.—*Question as to whether decree is binding—Decree amended after execution to conform with judgment—Decision in suit to set aside sale under amended decree.*] In a suit for money against the *karnavan* and two *anandravans* of a Malabar *tarwad*, the judgment directed a "decree for the plaintiffs as prayed," but the decree ordered payment by one *anandravan* only. Property of the *tarwad* was attached and sold. The decree was then amended and brought into conformity with the judgment. Other members of the *tarwad* sought to have the sale set aside, but it was found that the judgment-debt had been contracted for proper *tarwad* purposes, and that suit was dismissed. Application was now made for the attachment of other property of the *tarwad* in further execution of the amended decree: *Held*, that the members of the *tarwad* were not entitled to contend that the decree was not binding on them that matter being *res judicata*. CHATHAPPAN *v.* PYDEL.

[I. L. R. 15 Mad. 403

37.—*Usufructuary mortgage—Suit by mortgagee for possession—Decree for possession—Subsequent suit by mortgagor for redemption.*] In 1864 the lands in dispute were mortgaged under an agreement that the mortgagee should hold the lands and apply the profits towards the satisfaction of the mortgage-debt. In 1869 the mortgagor having obstructed the mortgagee, the latter filed a suit for removal of the obstruction and for confirmation of his possession. He obtained a decree ordering that he should retain possession till the debt was paid off from the usufruct. In 1885 the mortgagor filed a suit for redemption. The defence to this suit was that it was barred by the decree in the former suit:—*Held*, that the suit

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*continued.*

was not so barred, the relative rights of mortgagor and mortgagee not having been adjudicated upon in the former suit. NARSINHA MANOHAR *v.* BHAGVANTRAV.

[I. L. R. 14 Bom. 327

38.—*Suit by purchaser against mortgagee for possession—Issue raised by mortgagor impeaching bona fides of sale—Decree for plaintiff without recording finding on issue—Subsequent suit for redemption by mortgagor against mortgagees impeaching sale as fraudulent and void.*] In 1874 the plaintiff mortgaged certain property to *R D* and *R L*. In 1877 the mortgagees sold it by auction to one *K*, who in the following year sued the mortgagor for possession. The defendants in that suit filed a written statement impeaching *K's* title under the alleged sale, and at the hearing an issue was raised as to whether the plaintiff (*K*) was the purchaser of the premises *bonâ fide* and for valuable consideration. The plaintiff (*K*) obtained a decree in that suit, but no finding on the said issue was recorded. The plaintiff in the present case was the son of the mortgagee, and he now sued to redeem the property and for a declaration that the alleged sale by the mortgagees was fraudulent and void as against him. He contended that in the former suit he did not intend to allege that the sale was not *bonâ fide*, but merely that it took place without due notice and was impeachable on that ground, and he relied on the fact that there had been no finding on the issue:—*Held*, that the present suit was barred by the issue and decree in the former suit. In that suit the plaintiff (*K*) had given evidence that he was the *bonâ fide* purchaser of the property. Though no actual finding on that issue was recorded, the decree passed for the plaintiff necessarily involved the finding of the issue in the affirmative. RAMKRISHNA JAGANNATH *v.* VITHAL RAMJI.

[I. L. R. 15 Bom. 89

39.—*Civil Procedure Code, s.* 13—*Cross-appeals heard separately.*] The plaintiff and defendant in a suit each appealed separately, and defendant's appeal first came on for hearing, and an issue as to whether the plaintiff or the defendant had title to the land in dispute was decided on the facts by the Appellate Court adversely to the defendant. Subsequently, the plaintiff's appeal, involving the same issue, came on for hearing before the same Court:—*Held*, that although s. 13 of the Civil Procedure Code did not apply, still the principal of *res judicata* applied, and the finding on the former appeal barred the trial of the same issue in the latter. *Ram Kirpal* v. *Rup Kuari*, I. L. R. 6 All. 269; L. R. 11 I. A. 37, referred to. RAM LAL *v.* CHHAB NATH.

[I. L. R. 12 All. 578

40.—*Civil Procedure Code, s.* 13—*Finding in judgment in conflict with terms of decree—Immaterial issue in suit.*] The decree in a suit gave the plaintiff an unrestricted right to the property claimed by him, but in the judgment on which

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*continued.*

that decree was based it was stated, the finding apparently not being a finding on any material issue in the suit, that the defendants were entitled to certain rights in respect of the property decreed to the plaintiff. No application was made to bring the decree into conformity with the judgment, and the decree as it stood was affirmed on appeal:—*Held*, that the defendants as plaintiffs in a subsequent suit between the same parties relating to the same property could not plead the finding in their favour in the judgment as constituting *res judicata* in the face of the clear wording of the decree. INDARJIT PRASAD *v.* RICHHA RAI.

[I. L. R. 15 All. 3

41.—*Civil Procedure Code, ss.* 13, 43—*Contentions not raised by way of defence in former suit.*] In a suit to recover possession of the impartible zemindari of Shivaganga, it appeared that the *Istimrar* zemindar died in 1829, and that after an interval of wrongful possession by his brother and his descendants, his daughter established her title to succeed him and was placed in possession in 1864. She died in 1877 leaving the present plaintiff, her son, and three daughters her surviving. A suit was then brought by the father of the present defendant, who was the son of her elder sister (deceased), against the present plaintiff and the daughters of the late Rani for possession of the zemindari, to which he claimed to be entitled by right of inheritance. A decree was passed for the plaintiff in that suit, under which he obtained possession of the zemindari and retained it until his death in 1883, when he was succeeded by the present defendant. The plaintiff now sued as above, claiming that the right to the zemindari had devolved on him and not on the defendant on the death of the plaintiff in the former suit:—*Held* (1) that the defendant's father had not succeeded to a qualified heritage nor to a mere right of management of joint family property in which the plaintiff had a right of survivorship, but that he had succeeded to the estate as full owner and had, therefore, become a fresh stock of descent; (2) that, accordingly, nearness or remoteness of relationship to the *Istimrar* zemindar was immaterial, and the defendant's right of succession was not affected by the fact that the whole class of the *Istimrar* zemindar's daughters' sons had not been exhausted. *Held*, also, that the plaintiff was not precluded from raising the contentions to which the above rulings relate by reason of their not having been raised by way of defence to the suit brought against him by the defendant's father. MUTTUVADUGANATHA TEVAR *v.* PERIASAMI.

[I. L. R. 16 Mad. 11

42.—*Civil Procedure Code, ss.* 13, 272—*Execution-proceedings—Matter which ought to have been raised as a ground of defence.*] *A* and *B* obtained a decree against *X* and *Y*, on which about Rs. 9,000 was due. *Z* obtained a decree against *A* and *B*, on which about Rs. 6,400 was due, and in execution attached the first-mentioned decree. *A*

RES JUDICATA—*continued.*

(6) MATTERS IN ISSUE—*continued.*

and *B* first alleged in the matter of the execution of their decree for the first time that the suit against them had been instituted really by *X* though in the name of his son *Z*, and consequently contended that the decree amount, which they paid into Court, was the property of *X* and so liable to satisfy their claim. The above allegation was substantiated, and *Z's* claim on the money in Court was disallowed on appeal:—*Held* (1) that *A* and *B* were not precluded from asserting their claim to the money in Court by reason of the above allegation not having been made by way of defence to the suit of *Z;* (2) that *A* and *B* were entitled to enforce any claim, which *X* might enforce, for the purpose of satisfying their decree, and accordingly that *Z's* claim on the money in Court was rightly disallowed. ATCHAYYA *v.* BANGARAYYA.

[I. L. R. 16 Mad. 117

43.—*Civil Procedure Code* (*Act XIV of* 1883), *s.* 13, *Explanation* 2—*Question substantially in issue in former suit—Reversioner.*] A widow purported to charge land which she held for her widow's estate with payment of a debt; and afterwards surrendered her estate to the next heir, or reversioner, on condition that he should pay all her debts, and a suit was brought by the creditor after the death of the widow against the reversioner to recover the debt. This suit had been preceded by another one brought by the creditor against both the widow, then alive, and the reversioner, the cause of action against the latter being that in his hands was the property chargeable. That suit was dismissed as against him, but decreed against the widow. In the present suit payment was claimed from him of a balance of the deceased widow's debt, on the ground that he had agreed, on taking the surrender of the estate from her, to become responsible for her debts:—*Held*, that this "might and ought to have been made ground of attack" in the former suit, within the Explanation 2 of s. 13 of the Civil Procedure Code; and must, accordingly, be deemed to have been directly and substantially in issue in the former suit, and therefore that this suit was barred. The Acts of 1877 and 1882 did not alter the previous state of the law. KAMESWAR PERSHAD *v.* RAJKUMARI RUTTAN KOER.

[I. L. R. 20 Calc. 79

[L. R. 19 I. A. 234

44.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 13—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 158—*Incidents of tenancy, application to determine—Dispute as to tenancy—Landlord and tenant.*] The object of s. 158 of the Bengal Tenancy Act is merely to provide a summary procedure for settling disputes between landlord and tenant in regard to the particulars referred to in cls. (*a*), (*c*) and (*d*) of the section. Though cl. (*b*) does authorize the Court to determine the name and description of the tenant, this was not intended to and does not authorize the Court to decide conclusively disputes as to the right to possession of the land. An issue, therefore, regarding a dispute as to the existence of the relation of landlord and tenant between the parties in a proceeding under s. 158 can only be decided collaterally, and does not arise between the parties in such a manner as to make the decision upon it *res judicata* between them in a subsequent regular suit. *Bhopendra Narayan Dutt* v. *Nemye Chand Mondul*, I. L. R. 15 Calc. 627, and *Debendro Kumar Bundopadhya* v. *Bhupendro Narain Dutt*, I. L. R. 19 Calc. 182, referred to. PEARY MOHUN MUKERJI *v.* ALI SHEIKH.

RES JUDICATA—*concluded.*

(6) MATTERS IN ISSUE—*concluded.*

[I. L. R. 20 Calc. 249

45.—*Decision as to genuineness of deed.*] In a suit to establish the plaintiff's right to a standing crop on the basis of his title to the land, it was held that where the plaintiff's title depended upon the genuineness of a *kobala* in respect of the land, a finding with regard to such genuineness is binding as *res judicata* in a subsequent suit between the same parties with regard to the title to the same land, although no issue was distinctly raised in the former suit on the question of genuineness. *Soorjomonee Dayee* v. *Suddanand Mohapatter*, 12 B. L. R. 304; L. R. I. A. Sup. Vol. 212, referred to. DAKHYANI DEBEA *v.* DOLEGOBIND CHOWDHRY.

[I. L. R. 21 Calc. 430

(7) PARTIES.

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES

46.—*Civil Procedure Code, s.* 13—*Suit by benamidar.*] In a suit to recover a parcel of land, the plaintiff's case was that it had been purchased by him *benami* in the name of his brother, who had sued the present defendants to obtain possession in 1887, but had been negligent in the conduct of the suit which was consequently dismissed. It was found that there had been no negligence in the conduct of the suit, and that it had been instituted with the plaintiff's knowledge:—*Held*, that the plaintiff was bound by the decree in the former suit, and could not recover on his secret title. SHANGARA *v.* KRISHNAN.

[I. L. R. 15 Mad. 267

47.—*Civil Procedure Code*, 1882, *ss.* 13, 283—*Party to proceedings in execution—Order in execution—Estoppel.*] A claim in execution to a house which had been attached was dismissed, and the claimant then sued the decree-holder to establish her title to it. It appeared that the house had been previously attached in execution of another decree obtained by *A* against the same judgment-debtor and his father (since deceased); that the present plaintiff had then preferred a claim, which was allowed; that the judgment-debtor had taken no steps to have the order allowing the claim set aside; and that a suit filed by *A* with that object had been dismissed:—*Held*, that the plaintiff's claim was not *res judicata*, although she had been a party to the former proceedings, and

RES JUDICATA—*continued.*

(7) PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*continued.*

the defendant, not having been a party to the former proceedings, was not estopped from contesting it. GNANAMBAL *v.* PARVATHI.

[I. L. R. 15 Mad. 477

48. — *Civil Procedure Code, s.* 13.] One *N* brought a suit against a *lambardar* for her share in the profits of a certain *mehal*, her claim being based upon an assignment executed in her favour on the 29th of July 1889 by one *B* as heir to one *M* deceased. Prior to that assignment, namely, on the 3rd of June 1887, a suit had been commenced by the *lambardar* against *B* and one *K* for possession of other property alleged to have belonged to *M* in her lifetime, and in this suit it was ultimately found, but subsequently to the above-mentioned assignment in favour of *N*, that *K* and not *B* was the heir to *M*:—*Held*, that the suit commenced on the 3rd of June 1887 did not operate as *res judicata* in respect of the present plaintiff *N's* claim under her assignment from *B*. *Foster* v. *Earl of Derby*. 1 Ad. & E. 790, referred to. NIAZ-ULLAH KHAN *v.* NAZIR BEGAM.

[I. L. R. 15 All. 108

49.—*Civil Procedure Code*, 1882, *ss.* 13, 43—*Party for purpose of discovery only—Joint wrong-doers, judgment against one of several—Contract Act, s.* 43.] Prior to and in the year 1865 the defendant's brother *B* carried on an extensive business in Bombay and China. The defendant and another brother *A* carried on a separate business under the name of *A H*. In December 1866 *B* became insolvent, and his property vested in the Official Assignee. The present suit was brought in 1887 against the defendant by the Official Assignee to recover certain property which he alleged belonged to the insolvent, and ought to be distributed amongst his creditors. The plaintiff alleged that in 1865 the insolvent was possessed of a very large amount of property, and that being unwilling to meet his liabilities he and his son and his two brothers, *viz.*, *A* and the defendant *R*, fraudulently concealed his property from his creditors, and in September 1866 he himself went to Damar beyond British jurisdiction. In 1881 the plaintiff having obtained information that some of the insolvent's property was in the possession of his brother *A*, filed a suit (473 of 1881) against *A* to recover it. That suit was referred to arbitration, and the plaintiff obtained a decree for Rs. 3,60,000. The plaintiff now alleged that, shortly before the hearing of that suit, and subsequently, he had obtained information which led him to believe that the defendant had obtained some of the insolvent's property for which he was accountable. The defendant had been made a party to the former suit (473 of 1881) for the purpose of discovery only, and it was in the course of such discovery being given that some of the above information had been obtained. The plaint then set forth, in detail, the various items of claim

RES JUDICATA—*continued.*

(7) PARTIES—*continued.*

(*a*) SAME PARTIES OR THEIR REPRESENTATIVES —*concluded.*

in respect of which the plaintiff sought to make the defendant liable. The defendant pleaded that the said claims had been in issue in the former suit (473 of 1881), and were adjudicated upon, and that this suit was, therefore, barred by s. 13 of the Civil Procedure Code; that the plaintiff was barred by s. 43 of the Civil Procedure Code, the plaintiff having omitted to include these claims in the former suit to which defendant was a party; that the decree in the former suit (473 of 1881) was (*inter alia*) in respect of the matters alleged in this suit, and that as, according to the plaintiff's allegation, the defendant in that suit was a joint wrong-doer with the defendant in this suit in repect of these matters, the said decree was a bar to this suit:—*Held*, by SCOTT, J., that the suit was not barred, either by s. 13 or s. 43 of the Civil Procedure Code. The defendant was made a party to the former suit for certain limited purposes only. No relief was asked from him; no decree was made against him. He was merely a nominal defendant. He was not a party to the former suit in such a way as to bring the present suit within the section. *Held*, also, that the rule of *King* v. *Hoare*, 13 M. & W. 494, applies in India, *viz.*, that a judgment recovered against any one of several joint-debtors merges the remedy for the joint debt, and is a bar to an action against a co-debtor upon the joint liability; and, similarly, in a matter of *tort-feasance*, a judgment against one of several wrong-doers is a bar to an action on the same matter against the others. Such of the wrongs, therefore, alleged in the present suit as were of a joint character, and were adjudicated upon the previous suit, were extinguished by the former judgment. Applying the above rule, the Judge disallowed some of the items of the plaintiff's claim, and allowed others, and directed an account in respect of the latter. The Court of Appeal confirmed the decree of the Court of First Instance. RAHMUBHOY HUBIBBHOY *v.* TURNER.

[I. L. R. 14 Bom. 408

50.—*Party for purpose of discovery—Civil Procedure Code* (*XIV of* 1882), *ss.* 13, 43 — *Account.*] In a suit brought by the Official Assignee it was held that the defendant having been "made a party," but only "for the purpose of discovery," to a prior suit brought by the plaintiff, according to an order in that suit, in which, however, there was no decree against him as a party, and no order as to his costs:—*Held*, that this irregular proceeding had not rendered him a party to that suit so as to make applicable either s. 13 or s. 43 of the Civil Procedure Code. A decree that the defendant should account to the official assignee for the assets received by him from the insolvent after the date of the insolvency was affirmed. RAHIMBHOY HABIBBHOY *v.* TURNER.

[I. L. R. 17 Bom. 341

[L. R. 20 I. A. 1

RES JUDICATA—*continued.*

(7) PARTIES—*continued.*

(*b*) CO-DEFENDANTS.

51.—*Civil Procedure Code, s.* 13, *Expl. V—Suit for possession of a share in the property of a Mahomedan family.*] In a suit in 1882 between the members of a family following the Mahomedan law of inheritance, in which the plaintiffs sued as sharers for the recovery of their share in certain property, one of the defendants pleaded that a *paramba*, part of the property in dispute, was not subject to division, but this plea was unsuccessful, and a decree was passed for the plaintiffs. The present suit was brought by a mortgagee from one of the defendants in the former suit (against whom it had been decided *ex-parte*) to recover his share of the above-mentioned *paramba*, the subject-matter of his mortgage; the mortgagor was joined as defendant, among others, including the defendant who had raised the plea above stated. This plea was repeated by the same person:—*Held*, that the claim that the *paramba* was not subject to division was *res judicata* by virtue of the Civil Procedure Code, s. 13, Explanation V. CHANDU *v.* KUNHAMED.

[I. L. R. 14 Mad. 324

52.—*Civil Procedure Code, s.* 13, *Expl. V—Suit for possession of land*] The plaintiff, a junior member of a Malabar *tarwad*, alleged that her *karnavan* had assigned to her his *kuikanom* right over certain land, and that she had obtained a fresh demise from the *jenmi* and placed a tenant in possession The tenant was dispossessed by the present *karnavan*, and in 1886 sued him and the plaintiff to recover possession of part of the land. That suit was dismissed on the ground that the above allegations of the plaintiff were unfounded. She now sued the present *karnavan* for possession of the entire land:—*Held*, that the claim of the plaintiff was *res judicata* so far as it related to the land in question in the former suit but not as to the rest. MADHAVI *v* KELU.

[I. L. R. 15 Mad. 264

53.—*Plea raised in former suit.*] A Mapilla, alleging that certain "family property" had been enjoyed by herself and the defendants (who were her relations on the mother's side) in common till one year before suit, when she was excluded from possession, now sued to recover the share to which she claimed to be entitled under the Mahomedan law of inheritance. It appeared that the property had been acquired in the lifetime of the plaintiff's maternal grandfather who had died more than thirty years before suit, and that one of his sons had obtained a decree for his share of it in a suit to which among others the plaintiff and the father of the present contesting defendants were parties as defendants, and that a plea then raised by the latter to the effect that the property had been acquired by him was overruled. The present claim was sought to be resisted on the same ground, which was the subject of the second issue; and it was held by the lower Courts that the defendants were estopped from raising

RES JUDICATA—*continued.*

(7) PARTIES—*concluded.*

(*b*) CO-DEFENDANTS—*concluded.*

the plea, but there was no evidence as to whether this matter had been in controversy between the present plaintiff and her uncle in the former suit, which was decided *ex-parte* as far as she was concerned:—*Held*, on second appeal without finding on the question of *res judicata*, that in the absence of evidence no finding on the second issue should be called for. ABDUL KADER *v.* AISHAMMA.

[I. L. R. 16 Mad. 61

(8) COMPETENT COURT.

(*a*) GENERAL CASES.

54.—*Civil Procedure Code, ss.* 13, 98, 103—"*Court of competent jurisdiction*"—*Landlord and tenant—Suit for damages against lessor—Joinder of one of two co-lessees as defendant—Suit dismissed against such lessee.*] In 1883, *A*, the trustee of a certain charity, executed in favour of *X* and *Y* an agricultural lease for nine years and delivered over possession of the lands comprised in it, being part of the trust property. The lease contained a provision that it should be cancelled on default being made in payment of the rent and *kist*, and it contained no express covenant for quiet enjoyment. In 1887 default was made in payment of the rent and *kist*. *A* thereupon cancelled the lease and sued *X* and *Y* in a Subordinate Court and obtained a decree for the arrear, the total amount of his claim being Rs. 2,807. In that suit *X* alleged that *Y* was merely a name lender for *A*, who desired to benefit himself at the expense of the charity, and also that certain ryots setting up a false claim had evicted *X* from the lands demised at the instigation of *A*, who had subsequently sought unsuccessfully to obtain further advantages for himself. The Subordinate Judge framed an issue on each of these allegations and recorded findings in the negative. In the same year *X* filed a suit for damages for breach of contract against *A* and *Y* in the High Court, repeating in his plaint the above allegations. When that suit came on for hearing, it was dismissed for default, *Y* being the only party who appeared. *X* now sued *A* again on the same cause of action, making the same allegations. *Y* was subsequently brought on to the record as being a necessary party to the suit, being joined as second defendant, but he applied to be and was struck off the record on the ground that the dismissal of the former suit in the High Court was final as against him:—*Held*, that the matters put in issue in the Subordinate Court were not *res judicata* by reason of the decision of that Court; and that the plaint disclosed a good cause of action against the lessor. VITHILINGA PADAYACHI *v.* VITHILINGA MUDALI.

[I. L. R. 15 Mad. 111

55.—*Court of competent jurisdiction—Civil Procedure Code (Act X of* 1877), *ss.* 13, 433—*Suit against a Sovereign Prince.*] A suit for a declaration of the title of the plaintiffs' *tarwad* to certain land was filed in a District Court against the Maharaja

RES JUDICATA—*continued.*

(8) COMPETENT COURT—*continued.*

(*a*) GENERAL CASES—*continued.*

of Cochin and others, including the trustees of a *devasom*. It appeared that the same land was the subject of a suit instituted in a Subordinate Court on the 6th August 1877, to which the representatives of both the plaintiffs' *tarwad* and the *devasom* were parties, and that the land was then found to be the property of the *devasom*, and a decree was passed accordingly. It was contended that the present claim was not *res judicata* by reason of that decree, because, under the provisions of Act X of 1877, s. 433, which came into operation during the pendency of that suit, no Sovereign Prince could be sued in any Court subordinate to a District Court, and the Court which passed that decree was not therefore "a Court of jurisdiction competent to try" the present suit within the meaning of Civil Procedure Code, s. 13:—*Held*, that, although these words must be taken to refer to the jurisdiction of the Court at the time the suit was heard and determined, yet the present claim was *res judicata*, since the title to the land was a matter in issue within the cognizance of the Subordinate Judge and was adjudicated on by him. KUNJI AMMA *v.* RAMAN MENON.

[I. L. R. 15 Mad. 494

56.—*Court of competent jurisdiction—Valuation of suit—Munsif, jurisdiction of—Evidence Act, s. 44—Power of guardian to alienate land—Compromise of litigation.*] In 1882 the daughter of a deceased Hindu brought a suit in the Court of a District Munsif for a declaration that the defendant was not the adopted son of her father (deceased) as he claimed to be. It was found that the alleged adoption was valid, and the suit was dismissed. The then defendant now brought, in 1889, a suit in the same Court to recover possession of land from the then plaintiff, alleging that it had been wrongfully transferred to her by way of gift by his adoptive mother. The defendant denied the adoption and asserted that the transfer was valid as having taken place in accordance with an arrangement made by her father in his lifetime. It was admitted that the value of the whole property, to which the plaintiff was entitled by virtue of his adoption, if it was a valid adoption, exceeded Rs. 2,500. The Court of First Appeal held that the question of the adoption was not *res judicata*, and observed that the transfer to the defendant was apparently made to induce her to abandon her litigation as to the adoption:—*Held*, that the defendant was not at liberty to question the plaintiff's adoption, that matter being *res judicata*, and that the Court should try whether the transfer was made *bonâ fide* by the plaintiff's mother as his guardian for his benefit. VENKATARAGHAVA *v.* RANGAMMA.

[I. L. R. 15 Mad. 498

57.—*Decision in suit of the nature of Small Cause suit.*] Decisions in previous suits which were in the nature of Small Cause suits, and in which there was no right of second appeal

RES JUDICATA—*continued.*

(8) COMPETENT COURT—*continued.*

(*a*) GENERAL CASES—*continued.*

held not to operate as *res judicata*-*Bholabhai* v. *Adesang*, I. L. R. 9 Bom. 75, followed. GOVIND DHONDBARAV.

[I. L. R. 15 Bom. 104

58.—*Munsif, jurisdiction of—Resistance to execution of decree for possession—Civil Procedure Code, ss.* 13, 331.] The plaintiff having obtained a decree for possession of certain land applied for execution by delivery of possession; whereupon a third party filed an objection in the Munsif's Court that he held a prior decree for possession of the same land, and that therefore the plaintiff's decree could not be executed. This objection was allowed, and the plaintiff then sued for establishment of his right to possession of the land jointly with the objector, making the former judgment-debtor and the objector defendants to the suit. The Subordinate Judge in first appeal held that the Munsif had acted under s. 331 of the Code, and applying s. 13 of the Code dismissed the suit:—*Held*, on appeal, that under the circumstances the Munsif had no jurisdiction to act under s. 331, and therefore his order was not a *res judicata* in the proceedings. MAHABIR PRASAD *v.* PARMA.

[I. L. R. 14 All. 417

59.—*Suit by a uralan against an agent of a devasom—Repudiation of agency—Civil Procedure Code (Act XIV of* 1882), *s.* 13—*Munsif, jurisdiction of.*] In 1873 a predecessor of the plaintiff claiming to be the *uralan* of a *devasom* brought a suit in a District Munsif's Court against the present defendant, whom he alleged to be an agent to the *devasom*, and the defendant disputed the *uraima* right of the plaintiff and denied that he had been appointed agent as alleged. Issues as to both of these matters were decided in favour of the defendant, and the suit was dismissed in 1874. A suit was now brought in 1890 for a declaration of the plaintiff's title as *uralan*, and to recover from the defendant as such agent property of a value which exceeded the pecuniary limits of the jurisdiction of a District Munsif, the suit being therefore instituted in the Subordinate Judge's Court. *Semble*:—The decision in the prior suit did not constitute a bar to the present suit on the ground of *res judicata*. SANKARAN *v.* KRISHNA.

[I. L. R. 16 Mad. 456

60.—*Civil Procedure Code, ss.* 13 *and* 43—*Suit by mortgagee for personal remedy in one Court—Subsequent suit against mortgaged property in another Court—Latter suit not within jurisdiction of former Court—Munsif, jurisdiction of—Transfer of Property Act, s.* 99.] A bond, whereby certain immoveable property was hypothecated as security for a debt, was executed at the place of residence of the obligor, which was within the jurisdiction of a Court other than that within the jurisdiction of which the property hypothecated was situate. The obligee brought a suit in the former Court to recover the principal and interest

RES JUDICATA—*continued.*

(8) COMPETENT COURT—*concluded.*

(*a*) GENERAL CASES—*concluded.*

due on the bond against the obligor personally, on the convenant to pay contained in the bond, and prayed also for sale of the property hypothecated. That Court dismissed that suit so far as it related to the property, and also so far as the claim for principal was concerned, but awarded the plaintiff the interest claimed against the defendant personally. Subsequently the obligee brought a suit in the Court within the jurisdiction of which the property was situate for recovery of the principal money due on the bond by sale of the hypothecated property:—*Held*, that the latter suit was not barred by reason of the former suit, either under s. 13 or under s. 43, of the Civil Procedure Code. NARASINGA RAU *v.* VENKATANARAYANA.

[I. L. R. 16 Mad. 481

(*b*) REVENUE COURTS.

61.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 106—*Decision of a Revenue Officer under s.* 106.] A question heard and decided by a Revenue Officer under s. 106 of the Bengal Tenancy Act, 1885, is *res judicata* between the same parties in a subsequent suit in a Civil Court. *Hurri Sunker Mookerjee* v. *Muktaram Patro*, 15 B. L. R. 238, not applied. GOKHUL SAHU *v.* JODU NUNDUN ROY. GOBIND SAHU *v.* LUCHMI NARAIN ROY.

[I. L. R. 17 Calc. 721

62.—*Civil Procedure Code, s.* 13—*Madras Rent Recovery Act, s.* 9—*Decision of Revenue Court as to landholder's title.*] In a summary suit filed by a landlord against his tenant in the Court of the Deputy Collector under the Madras Rent Recovery Act, s. 9, to enforce acceptance of a *pottah* by the defendant, it appeared that, in a former suit between the same parties in the same Court, it had been decided that the defendant was the plaintiff's tenant, and as such bound to accept a *pottah* from him in respect of the land in question in the present suit:—*Held*, that the defendant was not entitled in the present suit to dispute the plaintiff's title, since the former decision constituted it *res judicata*. VENKATACHALAPATI *v.* KRISHNA.

[I. L. R. 13 Mad. 287

(9) RELIEF NOT GRANTED.

63.—*Dismissal of suit without leave to bring fresh suit—Civil Procedure Code, s.* 373—*Withdrawal of suit.*] Explanation III of s. 13 of the Civil Procedure Code contemplates a decree which does not expressly grant the relief claimed: the termination of a suit by the plaintiff being allowed to withdraw it, without leave to bring a fresh one, is not a bar, under Explanation III, to a subsequent suit in which the same matter is in issue. KAMINI KANT ROY *v.* RAM NATH CHUCKERBUTTY.

[I. L. R. 21 Calc. 265

RES JUDICATA—*continued.*

(9) RELIEF NOT GRANTED—*continued.*

64.—*Suit for possession and mesne profits—Civil Procedure Code* (*Act XIV of* 1882), *ss.* 13, 211, 244 — *Decree for possession and mesne profits up to date of suit—Separate suit for subsequent mesne profits.*] In a suit for recovery of possession and mesne profits, the Court has power under s. 211 of the Civil Procedure Code either to award mesne profits up to the date of the institution of the suit, or up to the date of delivery of possession. And where a decree for possession is silent as regards mesne profits which have accrued between the date of the institution of the suit and delivery of possession, a separate suit will lie for such subsequent mesne profits. ss. 13 and 244 of the Code being no bar to it. *Sadasiva Pillai* v. *Ramalinga Pillai*, L. R. 2 I. A. 219; 15 B. L. R. 383; *Fakharuddin Mahomed Ashan Chowdhry* v. *Official Trustee of Bengal*, L. R. 8 I. A. 197; I L. R. 8 Calc. 178; *Bijnath Pershad* v. *Badhoo Singh* 10 W. R 486; *Pratap Chandra Burua* v. *Swarnamayi*, 4 B. L. R. F. B. 113; 13 W. R. F. B. 15; and, *Haramohini Chowdhrani* v. *Dhanmani Chowdhrani* 1 B. L. R. A. C. 138, referred to. MON MOHUN SIRKAR *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 17 Calc. 968

65—*Civil Procedure Code, ss.* 13, 211, 244—*Claim as to which judgment is silent—Mesne profits subsequent to suit.*] In a suit for the partition of a zemindari, the plaintiffs asked (*inter alia*) for "ten years' past profits and for subsequent profits." The Judge passed a decree for partition in which mesne profits for three years prior to the suit were decreed to the plaintiffs, but his judgment and decree were silent with regard to the subsequent profits claimed in the plaint. The defendant appealed against this decree, and the plaintiffs preferred a memorandum of objections against part of it, but did not object to it so far as it omitted to provide for subsequent mesne profits. The plaintiffs instituted the present suit to recover from the defendant mesne profits from the date of the above suit:—*Held*, that the plaintiffs' claim so far as concerned mesne profits accrued since the decree in the former suit was not *res judicata*, and the suit to that extent was not precluded by the Civil Procedure Code, s. 13. RAMABHADRA *v.* JAGANNATHA.

[I. L. R. 14 Mad. 328

66.—*Suit for possession and mesne profits—Ex-parte decree for possession without mention of mesne profits — Subsequent suit for same mesne profits and for subsequent mesne profits — Civil Procedure Code* (*Act XIV of* 1882), *s.* 13.] A suit was instituted for recovery of possession and for mesne profits. An *ex-parte* decree for possession only was made, but that decree was silent as regarded the mesne profits. Subsequently a second suit was instituted for the same mesne profits as well as for mesne profits for a subsequent period:—*Held*, that the claim for mesne profits prior to the institution of the first suit was barred under s. 13

RES JUDICATA—*concluded.*

(9) RELIEF NOT GRANTED—*concluded.*

of the Civil Procedure Code. JIBAN DAS OSWAL *v.* DURGA PERSHAD ADHIKARI.

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[I. L. R. 19 Calc. 513

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[I. L. R. 14 Bom. 189

RESTITUTION OF CONJUGAL RIGHTS.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[I. L. R. 18 Calc. 378

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[I. L. R. 17 Bom. 400

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[I. L. R. 13 All. 126

See VALUATION OF SUIT—SUITS.

[I. L. R. 18 Calc. 378

— Mahomedan law—Dower — Prompt dower — Stipulation as to residence.] In a suit by a Mahomedan husband for restitution of conjugal rights, the defendant his wife pleaded *first*, that he had entered into a stipulation at the time of the marriage to reside with her in the house of her father, and that he had not done so; and *secondly*, that he had not paid the exigible portion of the dower due to her, the marriage having been consummated:—*Held*, as to the first point, upon the facts, (after referring to the authorities, but without deciding whether a stipulation of this kind can be valid in any case,) that the stipulation relied upon was not a sufficient answer to the plaintiff's claim. *Held*, upon the authorities that the non-payment of prompt dower is not a sufficient plea in bar of such a suit. *Abdul Kadir* v. *Salima*, I. L. R. 8 All. 149, approved. HAMIDUNNESSA BIBI *v.* ZOHIRUDDIN SHEIK.

[I. L. R. 17 Calc. 670

RESTITUTION OF RIGHTS BY MOTION.

—Execution pending appeal of decree set aside on appeal—Restitution of rights by motion where the appellate decree does not mention restitution —Civil Procedure Code (Act XIV of 1882), *s.* 583.] Where a decree made by a Court of First Instance is executed pending an appeal, and on appeal such decree is set aside, the appellant is entitled by motion to obtain restitution, even though the decree of the Court of Appeal is silent as to such restitution. *A*, the owner of a 15 odd pie share of certain indigo land, brought a suit for partition against his co-sharer *B*, the owner of the rest of the land, and obtained a decree, from which *B* appealed. *A*, without waiting for the disposal of the appeal, executed his decree and obtained possession of his share, settling it with tenants. The decree was subsequently set aside on *B's* appeal, but no order as to restitution was made in it:—*Held*, on motion by *B*, that he was entitled to be put into the same position as before the partition was made (*i.e.*, joint possession with *A*) and to remove any tenants who refused to vacate. ROHNI SINGH *v.* HODDING.

[I. L. R. 21 Calc. 340

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See GRANT—RESUMPTION OR REVOCATION OF GRANT.

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[I. L. R. 14 Mad. 81

(1) FORM OF, AND PROCEDURE ON, APPLICATION.

1.—*To what Court application should be made—Presentation of application to Munsarim instead of Judge.*] On the 26th January 1889, an application was presented to the Munsarim of the District Judge's Court for review of a judgment passed on the 19th December 1888. The application was insufficiently stamped, and the Munsarim endorsed on it "stamp insufficient." On this a dispute ensued between the pleader for the applicant and the Munsarim as to the sufficiency of the stamp. On the 25th April 1889, the deficiency pointed out by the Munsarim was made good. On the 26th May the Judge admitted the application, on the applicant paying the Court-fee payable on an application presented on or after ninety days from the date of the decree:—*Held*, that the application should have been presented to the Judge, and not to the Munsarim. MUNRO *v.* CAWNPORE MUNICIPAL BOARD.
[I. L. R. 12 All. 57

(2) GROUND FOR REVIEW.

2.—*Question of general commercial importance—Special ground.*] Where the point sought to be raised in review had not been raised or argued by

REVIEW—CIVIL CASES—*concluded.*

(2) GROUND FOR REVIEW—*concluded.*

either party, but was first taken by the Court itself in giving its opinion upon the case referred to it, the Court granted a review, observing as follows:—"The question arising in this case is not a question merely between two parties, but is one of great general commercial importance, and under the circumstances, and on the very special grounds I have mentioned, we think that the review ought to be granted." SULLEMAN HUSSEIN *v.* NEW ORIENTAL BANK CORPORATION.

[I. L. R. 15 Bom. 267

3—*Special Judge, power of, to review his own order on ground of discovery of fresh evidence—Dekhan Agriculturists Relief Act, s.* 53.] The Code of Civil Procedure is not applicable to proceedings before the Special Judge under the Dekhan Agriculturists Relief Act (XVII of 1879). The Special Judge has, therefore, no jurisdiction to grant a review of a decree or order once made by him on the ground of the discovery of new evidence. BABAJI *v.* BABAJI.

[I. L. R. 15 Bom. 650

(3) REVIEW BY JUDGE OTHER THAN JUDGE IN ORIGINAL CASE.

4.—*Civil Procedure Code (Act XIV of* 1882), *s.* 624 — *Execution-case struck off in absence of decree-holder and without giving him notice of day fixed for hearing it—Ground for review by another Judge—Practice.*] In the absence of the decree-holder, and without giving him notice of the day fixed for the hearing of the *darkhast*, the Subordinate Judge struck off an execution-proceeding:—*Held*, that under s. 624 of the Civil Procedure Code, an application to review the order could not be heard by the successor of the Judge who made it. KHEMA KANUJI *v.* DHANJI FRAMJI.

[I. L. R. 14 Bom. 101

5.—*Civil Procedure Code (Act XIV of* 1882), *ss.* 624, 626 (*c*)—*Civil Procedure Code Amendment Act (VII of* 1888). *s.* 59—*Notice of hearing review.*] An application for review of judgment upon grounds other than those mentioned in s. 624 of the Code of Civil Procedure (as amended by Act VII of 1888), if presented to the Judge who delivered it, and who has thereupon directed notice to be given to the opposite party, may be heard and disposed of by his successor. GANPAT *v.* JIVAN.

[I. L. R. 16 Bom. 603

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[I. L. R. 16 Bom. 550

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[I. L. R. 15 All. 373

(1) GENERAL CASES.

1.—*Power of High Court—Rules* 18, 20, *made under Act XXIV of* 1839—*Agent to the Governor at Vizagapatam.*] The Agent to the Governor at Vizagapatam dismissed an appeal under the Agency Rules, No. 18. The appellant preferred a petition to the High Court against the order of the Agent:—*Held*, that the High Court had no power to interfere. JAGANNADHA *v.* GOPANNA.

[I. L. R. 16 Mad. 229

(2) SMALL CAUSE COURT CASES.

2.—*Circumstances under which the High Court will exercise its revisional powers under s.* 25 *of Act IX of* 1887 (*The Provincial Small Cause Courts Act*).] Section 25 of the Provincial Small Cause Courts Act (IX of 1887) was not intended to give in effect a right of appeal in all Small Cause Court cases, either on law or fact. The revisional powers given by that section are only exerciseable where it appears that some substantial injustice to a party to the litigation has directly resulted from a material misapplication or misapprehension of law, or from a material error in procedure. *Muhammad Nizam-ud-din Khan* v. *Hira Lal*, Weekly Notes, 1890, p. 121, and *Masum Ali* v. *Mohsin Ali*, Weekly Notes, 1890, p. 201, approved. MUHAMMAD BAKAR *v.* BAHAL SINGH.

[I. L. R. 13 All. 277

3.—*Provincial Small Cause Court Act (IX of* 1887). *s.* 25—*Civil Procedure Code, s.* 622—*Superintendence of High Court—Wrong decision on a question of limitation.*] An application under s. 25 of Act IX of 1887 to set aside a decree ought not to be entertained except in cases in which a similar application under s. 622 of the Code of Civil Procedure would be allowed. Such an application will not lie where the sole ground is whether the first Court was or was not right in its decision on a question of limitation. *Amir Hasan Khan* v. *Sheo Baksh Singh*, I. L. R. 11 Calc. 6, referred to. RAGHU NATH SAHAI *v.* OFFICIAL LIQUIDATOR OF THE HIMALAYA BANK.

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[I. L. R. 16 Bom. 372

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[I. L. R. 20 Calc. 633

(1) ACQUITTALS.

1.—*Criminal Procedure Code, ss.* 435, 439, 440—*Petition to revise a judgment of acquittal.*] An appeal against an acquittal by way of revision is not contemplated by the Code, and it should, on public grounds, be discouraged. THANDAVAN *v.* PERIANNA.

[I. L. R. 14 Mad. 363

2.—*Criminal Procedure Code,* 1882, *s.* 439—*High Court's power of revision—Practice.*] Though the High Court has the power, under s. 439 of the Code of Criminal Procedure (Act X of 1882), to revise an order of acquittal, yet ordinarily it does not interfere with such an order in the exercise of its revisional jurisdiction, because an appeal can always be made by the Local Government under s. 417 of the Code. HEERABAI *v.* FRAMJI BHIKAJI.

[I. L. R. 15 Bom. 349

(2) COMMITMENT.

3.—*Power of High Court in revision to order person convicted and sentenced to be committed for trial—Penal Code (Act XLV of* 1860), *s.* 326—*Grievous hurt—Inadequate sentence—Presidency Magistrate, duty of—Criminal Procedure Code, ss.* 423, 439.] The accused was tried by a Presidency Magistrate on a charge of voluntarily causing grievous hurt with an instrument for cutting. He was convicted and sentenced, under s. 326 of the Penal Code, to rigorous imprisonment for two years. The Local Government, being

(2) COMMITMENT—*concluded.*

of opinion that the sentence was inadequate, moved the High Court, under s. 435 of the Code of Criminal Procedure (Act X of 1882), to quash the Magistrate's proceedings, and ordered the accused to be committed for trial to the High Court. It was contended for the prisoner that, as the offence was not exclusively triable by the Court of Session, the High Court had no power, under s. 423 (*b*) of the Code, to order the accused to be committed for trial:—*Held,* dissenting from *Queen-Empress* v. *Sukha,* I. L. R. 8 All. 14, that s. 423 (*b*) gives to an Appellate Court the power to order an accused person to be committed for trial when it considers that that is the procedure that should have been adopted by the Magistrate in the case. *Held,* also, that the offence of which the prisoner was convicted, being one punishable under s. 326 of the Penal Code with transportation for life, or rigorous imprisonment for ten years and fine, the Presidency Magistrate ought to have committed the accused for trial to the High Court. QUEEN-EMPRESS *v.* ABDUL RAHIMAN.

[I. L. R. 16 Bom. 580

(3) QUESTIONS OF FACT.

4.—*Criminal Procedure Code,* 1882, *ss.* 435, 439—*High Court's powers of revision in criminal cases.*] Unders s. 435 and 439 of the Code of Criminal Procedure (Act X of 1882) the High Court can, in the exercise of its revisional jurisdiction, interfere with the findings of fact of inferior Courts; and will do so if there are very exceptional grounds for its interfereuce, in the interests of justice. *Per* JARDINE, J.:—As a rule, the Court refuses to interfere (1) where the Legislature intended the original or appellate decision on the facts to be final; (2) where the relief sought might be got from a lower Court of concurrent revisional jurisdiction; and (3) where the lower Court's judgment on the facts is not shown to be clearly and manifestly wrong. QUEEN-EMPRESS *v.* CHAGAN DAYARAM.

[I. L. R. 14 Bom. 331

(4) MISCELLANEOUS CASES.

5.—*Criminal Procedure Code, ss.* 195, 476—*Sanction to prosecution—Preliminary inquiry—Jurisdiction of High Court to quash orders under s.* 476 *of the Criminal Procedure Code.*] The High Court has jurisdiction to interpose in the case of an order made by a Court under s. 476 of the Criminal Procedure Code, and has also the power to determine whether the discretion given by that section has or has not been properly exercised. *In the matter of the Petition of Khepu Nath Sikdar* v. *Girish Chunder Mukkerjee,* I. L. R. 16 Calc. 730, relied on. CHAUDHARI MAHOMED IZHARUL HUQ *v.* QUEEN-EMPRESS.

[I. L. R. 20 Calc. 349

REVIVOR.

See LIMITATION ACT, 1877, ART. 180.

[I. L. R. 20 Calc. 551

RIGHT OF APPEAL.

See PAUPER SUIT.

[I. L. R. 13 All. 326

1.—*Death of plaintiff-appellant—Rival applicants for substitution—Order under Civil Procedure Code, ss.* 367, 582, *substituting one of two applicants—No appeal from such order—Unsuccessful applicants attempting to appeal from final decree on appeal—Civil Procedure Code, s.* 591—"*Error, defect or irregularity, affecting the decision of the case.*"] Pending an appeal before the lower Appellate Court, the plaintiff-appellant died, and two persons separately applied to be substituted as the deceased's representative. The Court, applying ss. 367 and 582 of the Civil Procedure Code, decided in favour of one of the applicants and brought him upon the record. No appeal was made against this order by the unsuccessful applicant. The lower Appellate Court decided the appeal adversely to the successful applicant. Subsequently the unsuccessful applicant established by a separate suit that she was the deceased's legal representative, and that her opponent was not. She attempted to appeal to the High Court against the lower Appellate Court's degree dismissing the appeal:—*Held*, that the appellant, not having been a party to the decree below, and the order below having decided that she was not entitled to be a party to the proceedings of the lower Appellate Court, she was not entitled to maintain the appeal to the High Court, and s. 591 of the Civil Procedure Code was not applicable to the case. *Har Narain* v. *Kharag Singh*, I. L. R. 9 All. 447, distinguished. Where an order under the group of sections in the Civil Procedure Code relating to representatives has been made excluding a person from the record, that person must seek his remedy by an appeal against the order, and is not entitled to appeal against the decree so long as the order stands. Error, defect or irregularity within the meaning of s. 591 of the Code means error, defect or irregularity in procedure or in law, and not in matters of fact. In the present case there was no error, defect or irregularity within the meaning of the section, and even if there were, it did not affect the decision of the case in appeal below. SANKALI *v.* MURLIDHAR.

[I. L. R. 12 All. 200

2.—*Plaint, amendment of—Adding a defendant in a suit where leave to sue under cl.* 12 *of the Letters Patent,* 1865, *was necessary—Alternative liability—Order to add new defendant—Appeal against such order by original defendant.*] The plaintiff filed this suit against the defendant *F*, alleging that she had a firm and carried on business at Sihore, in the territory of Bhopal. Before the suit was filed, leave was duly obtained under cl. 12 of the Letters Patent, 1865. In her written statement, *F* denied that she was the owner of the Sihore firm, or that she was responsible for any of its dealings with the plaintiffs. She alleged that the Sihore firm had belonged to her son *P*, who died in *Samvat* 1943, leaving a daughter named *G*, a minor, who was still living. The plaintiff then obtained a summons

RIGHT OF APPEAL—*concluded.*

calling on the defendant *F* to show cause why the plaint and proceedings should not be amended by adding the name of *G* as a party-defendant. The summons was made absolute, and an order was made to add *G* as a defendant. The defendant *F* appealed, contending that the effect of adding a defendant would be to institute a new suit against *G* without obtaining the necessary leave under the Letters Patent. She relied on *Rampurtab* v. *Premsukh Chandamal*, I. L. R. 15 Bom. 93:—*Held*, dismissing the appeal, that the defendant *F* could not appeal against the order making *G* a party. It might be that *G* might object to the order either before or at the hearing, but she only could take the objection. The defendant *F* could not take it for her. The case of *Rampurtab* v. *Premsukh Chandamal* did not apply. In that case the proposed amendment altered the cause of action. Here it was left unaffected. On the cause of action as set forth in the plaint, leave had been given under cl. 12 of the Letters Patent to sue the defendant *F*, and so far as she was concerned there was no objection to the form of the suit. If her allegation was true, *G* and not *F* was liable. That question would be decided at the trial. FOOLIBAI *v.* RAMPRATAB SAMRATRAI.

[I. L. R. 17 Bom. 466

RIGHT OF OCCUPANCY.

		Col.
1.	Acquisition of Right ...	... 955
	(*a*) Mode of acquisition	... 955
2.	Loss or Forfeiture of Right	... 955

See LANDLORD AND TENANT—NATURE OF TENANCY.

[I. L. R. 16 Mad. 131

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 18 Calc. 647

——, Devolution of.

See EJECTMENT.

[I. L. R. 13 All. 403

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 14 All. 381

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 14 All. 381

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[I. L. R. 15 All. 219, 231

See ONUS PROBANDI—LANDLORD AND TENANT.

[[I. L. R. 15 Mad. 95
[I. L. R. 16 Mad. 271

See RIGHT OF SUIT—ACCRUAL OF RIGHT.

[I. L. R. 15 All. 399

RIGHT OF OCCUPANCY—*continued.*

(1) ACQUISITION OF RIGHT.

(*a*) MODE OF ACQUISITION.

1.—*Bengal Tenancy Act, s.* 180—"*Utbundi*" *holding.*] Case in which the question as to what is an *utbundi* tenure is discussed. Where the plaintiff, who had been dispossessed from certain land, claimed a right of occupany in such land on the ground that he had held it for twelve years continuously:—*Held*, that if the land formed a separate holding which he had from time to time cultivated on the *utbundi* system during a period which had covered more than twelve years, cultivation at various times and under separate agreements on each occasion (such periods not being continuous although of the same piece of land), would not confer a right of occupancy on the ground that the first of such periods commenced more that twelve years before the alleged dispossession. BENI MADHUB CHUCKERBUTTY *v.* BHUBUN MOHUN BISWAS.

[I. L. R. 17 Calc. 393

2.—*Bengal Rent Act* (*Act X of* 1859), *ss. 6 and 7*—*Bengal Rent Act* (*Bengal Act VIII of* 1869), *ss.* 6 *and* 7—*Mostajiri lease*—*Cultivating possession*—*Onus probandi.*] Under Bengal Act VIII of 1869, ss. 6 and 7, as well as previously under the similar ss. 6 and 7 of the Rent Act X of 1859, a ryot paying rent for, and cultivating, land continuously for a period of twelve years had a right of occupancy, whether he held under a *pottah* or not. In reference to this, it was *held* that a lessee of land continuously in cultivating possession for a period of twelve years, under several written leases or *pottahs* which were for specified terms of years, but in which there was no express stipulation for the landlord's re-entry on their expiration, had a right of occupancy The mere existence of a term in a lease was not an "express stipulation" to the contrary, within the meaning of s. 7, so as to exclude the right of occupancy. The decision of the Full Bench in *Sheo Prokash Misser* v. *Ram Sahai Singh*, 8 B. L. R 165, approved and held applicable. In a suit for the recovery of possession, with mesne profits, of land, brought by a lessor against a tenant holding over, the defence was, as to part of the land, that the tenant had a right of occupancy, his cultivating possession having lasted for more than twelve years. The right was established, but the burden of proving to which part of the land it attached was upon the tenant, and for proof as to this the suit was remanded. CHANDRABATI KOERI *v.* HARRINGTON.

[I. L. R. 18 Calc. 349
[L. R. 18 I. A. 27

(2) LOSS OR FORFEITURE OF RIGHT.

3.—*Effect upon acquisition of right of occupancy of ryot being jointly interested in land of ijaradar*—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 22, *sub-section* (3).] Both under s. 22, sub-section (3) of the Bengal Tenancy Act (VIII of 1885) and under the previous law a person jointly interested in land as *ijaradar* does not thereby lose his occupancy-rights, and *a fortiori* his entire rights as a

RIGHT OF OCCUPANCY—*concluded.*

(2) LOSS OR FORFEITURE OF RIGHT—*concluded.*

tenant, in land held and cultivated by him as a ryot. *Gur Buksh Roy* v. *Jeolal Roy*, I. L. R. 16 Calc. 127, referred to. MASEYK *v.* BHAGABATI BARMANYA.

[I. L. R. 18 Calc. 121

4.—*Khoti tenure*—*Mortgage by registered occupant*—*Sale in execution of decree on mortgage*—*Suit for possession by assignee of purchaser at such sale*—*Bombay Land Revenue Act, ss.* 86, 153.] One *B*, the registered occupant of certain lands situate in a *khoti* village, mortgaged the lands to one *V*, who got a decree on the mortgage. In execution of the decree the lands were sold to *P*, who assigned them to the plaintiff. In January 1878, the defendant, as *khot*, took possession of the land, alleging that *B* had no right to mortgage; that he had left the village and forfeited his occupancy; that he (the defendant) had thereupon rightfully taken possession of the land in 1878, and that the occupancy had been declared forfeited by the revenue authorities in August 1887, under ss. 86 and 153 of the Bombay Land Revenue Code, (Bombay Act V of 1879). In 1888 the plaintiff brought this suit to recover the lands. The lower Court held that the defendant by accepting rent from the mortgagee was proved to have "consented to the mortgage and its necessary consequences." On appeal to the High Court:—*Held*, reversing the decree of lower Court, that the plaintiff on the strength of his purchase from *P* in 1887 had no right to eject the defendant. PURUSHOTTAM VAMAN SOMAN *v.* KASHIDAS JEYCHANDSHET.

[I. L. R. 17 Bom. 677

5.—*Bengal Tenancy Act* (*VIII of* 1885), *s.* 19—*Statutory right, effect on, of repeal of Act which gives it.*] Where a right of occupancy had been acquired under the old Tenancy Act (VIII of 1869), which is repealed by the Bengal Tenancy Act (VIII of 1885):—*Held*, that apart from the provisions of s. 19 of the latter Act, such right of occupancy was not forfeited by the repeal, there being nothing in the new enactment to deprive any person of a statutory right which had been actually acquired. HURRY RAM *v.* NURSINGH LAL.

[I. L. R. 21 Calc. 129

RIGHT OF REPLY.

1.—*Practice*—*Prosecutor's right of reply*—*Criminal Procedure Code* (*Act X of* 1882), *s.* 289.] The putting in, as evidence on his behalf, of any documentary evidence by an accused person during the cross-examination of the witnesses for the prosecution and before he is asked under s. 289 if he means to adduce evidence, does not give the prosecution a right to reply. *Empress* v. *Kaliprossonno Dose*, I, L. R. 14 Calc. 245, followed. *Queen-Empress* v. *Venkatapattu*, I L. R. 11 Mad. 339, dissented from. QUEEN-EMPRESS *v.* SOLOMON.

[I. L. R. 17 Calc. 930

RIGHT OF REPLY—*concluded.*

2.—*Documents put in evidence on behalf of accused during cross-examination of witnesses for prosecution—No witnesses called for defence—Criminal Procedure Code (Act X of 1882), s. 292—Practice.*] The fact that during the cross-examination of witnesses for the prosecution, documents are put in evidence on behalf of the accused, does not give the prosecution the right of reply if no witnesses are called for the defence. QUEEN-EMPRESS *v.* KRISHNAJI BABURAV BULELL.

[I. L. R. 14 Bom. 436

3.—*Criminal Procedure Code, ss.* 289, 292—*Adducing evidence for the defence—Documents produced for cross-examination of Crown witness—Practice.*] In a trial before a High Court or a Court of Session, evidence for the defence cannot be adduced until the close of the case for the prosecution: but counsel for the defence may, while a witness for the Crown is under cross-examination, put documents to him, and if in so doing counsel reads or causes to be read to the Court such documents, he thereby impliedly undertakes to put those documents in as evidence at the proper time. When such documents as aforesaid are filed in Court as evidence, or any other documentary evidence is put in by the defence, the defence has "adduced evidence" within the meaning of ss. 289 *et seq.* of the Code of Criminal Procedure, so as to give the prosecution a right of reply, though no witnesses may be called for the defence. In a trial at the Criminal Sessions of the High Court, during the cross-examination of one of the witnesses for the Crown, counsel for the defence put certain documents to the witness, and these were read to the Court and jury and marked as exhibits as evidence for the defence, and were filed with the record in the same way as the evidence for the prosecution had been marked and filed. During the cross-examination of the next witness a similar course was pursued, and after the cross-examination had continued for some time, counsel for the defence applied to the Court for a ruling as to whether the fact of documents having been used during cross-examination in the manner above stated would, under s. 292 of the Code of Criminal Procedure, entitle the Crown to a reply, in the event of the accused not calling witnesses:—*Held*, that although, as a matter of order, such a question would be better raised either when the first document intended to be used in this way was put to a witness, or when the accused was asked if he meant to adduce evidence, yet there was nothing in the Code of Criminal Procedure to prevent the Court from deciding the question at any other stage, and that, under the special circumstances of the case, it might be considered then. *Held*, also, that the use of the documents in the manner above stated gave the prosecution a right of reply. *Queen-Empress* v. *Grees Chunder Banerjee*, I. L. R. 10 Calc. 1024; *Empress of India* v. *Kaliprosonno Doss*, I. L. R. 14 Calc. 245; *Queen-Empress* v. *Solomon*, I. L. R. 17 Calc. 930; and *Queen-Empress* v. *Krishnaji Baburav Bulell*, I. L. R. 14 Bom. 430, dissented from. QUEEN-EMPRESS *v.* HAYFIELD.

[I. L. R. 14 All. 212

RIGHT OF SUIT.

		Col.
1.	Accrual of Right ...	... 960
2.	Interest to Support Right	... 960
3.	Awards	... 961
4.	Charities	... 961
5.	Contracts or Agreements	... 965
6.	Costs	... 967
7.	Endowments, Suits relating to	... 967
8.	Insolvency	... 968
9.	Obstruction to Public Highway	... 968
10.	Office or Emolument ...	... 969
11.	Orders, Suit to Set Aside	... 970
12.	Sale for Arrears of Revenue	... 970
13.	Sale in Execution of Decree	... 971

See ATTACHMENT—SUBJECTS OF ATTACHMENT—PARTNERSHIP PROPERTY.

[I. L. R. 13 Mad. 447

See BENGAL TENANCY ACT, s. 174.

[I. L. R. 18 Calc. 481

See CALCUTTA MUNICIPAL ACT, 1876, s. 357.

[I. L. R. 18 Calc. 91

See CIVIL PROCEDURE CODE, s. 232.

[I. L. R. 16 Mad. 325

See CASES UNDER CIVIL PROCEDURE CODE, s. 244.

See CLAIM TO ATTACHED PROPERTY.

[I. L. R. 18 Calc. 296

See CLUB.

[I. L. R. 14 Mad. 362

See DAMAGES—SUITS FOR DAMAGES—TORTS.

[I. L. R. 13 All. 98

See DEBTOR AND CREDITOR.

[I. L. R. 16 Mad. 85

See EJECTMENT.

[I. L. R. 14 Mad. 269

See ENDOWMENT.

[I. L. R. 14 Mad. 1

See FRAUD—EFFECT OF FRAUD.

[I. R. L. 16 Mad. 198

See HINDU LAW—CUSTOM—ENDOWMENT.

[I. L. R. 14 Bom. 90

See HINDU LAW—ENDOWMENT—TRANSFER OF RIGHT OF WORSHIP.

[I. L. R. 15 Mad. 389

See CASES UNDER JURISDICTION OF CIVIL COURT.

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[I. L. R. 21 Calc. 433

RIGHT OF SUIT—*continued.*

See LIBEL.

[I. L. R. 14 Bom. 97

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 20 Calc. 906

See LIMITATION ACT, 1877, ART. 147.

[I. L. R. 14 Bom. 269

See MAHOMEDAN LAW—INHERITANCE.

[I. L. R. 14 Mad. 324

See MALABAR LAW—JOINT FAMILY.

[I. L. R. 14 Mad. 425

[I. L. R. 15 Mad. 19

See MAMLATDARS COURTS ACT.

[I. L. R. 14 Bom. 371

See MORTGAGE—CONSTRUCTION OF MORTGAGES.

[I. L. R. 14 Mad. 477

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

[I. L. R. 16 Bom. 656, 659 note

See CASES UNDER PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

See POSSESSION—EVIDENCE OF TITLE.

[I. L. R. 21 Calc. 244

See PRINCIPAL AND AGENT—AUTHORITY OF AGENTS.

[I. L. R. 15 Bom. 177

See RECEIVER.

[I. L. R. 18 Calc. 477

See REPRESENTATIVES OF DECEASED PERSON.

[I. L. R. 14 Mad. 454

[I. L. R. 16 Mad. 405

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.

[I. L. R. 21 Calc. 255

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

[I. L. R. 13 All. 383

See SONTHAL PERGUNNAHS SETTLEMENT.

[I. L. R. 18 Calc. 146

See VOLUNTARY PAYMENT.

[I. L. R. 14 Bom. 299

RIGHT OF SUIT—*continued.*

(1) ACCRUAL OF RIGHT.

1.—*Cause of action—Suit by zemindar to recover possession of occupancy-holding against occupancy-tenant and his alleged transferee in possession—Death of occupancy-tenant after filing of suit but before notice—N.-W. P. Rent Act, s.* 9.] A plaintiff is not entitled to a decree in his suit unless, by proof or admission or default of pleading, he shows that when he instituted that suit he was entitled to a decree. One *K C*, a zemindar, sued in a Court of Revenue to recover an occupancy-holding from one *B S*, his occupancy-tenant, and that tenant's transferee, *G S*, to whom, by a transfer which was inoperative under s. 9 of Act XII of 1881, *B S*, had purported to make over his occupancy-holding. The occupancy-tenant died after the suit was filed, but before he had received notice of it, and the transferee being in sole possession of the occupancy-holding defended the suit:—*Held*, under the above circumstances, that the zemindar's suit must fail, inasmuch as at the time when it was filed he was not entitled to immediate possession of the occupancy-holding. GULZAR SINGH *v.* KALYAN CHAND.

[I. L. R. 15 All. 399

(2) INTEREST TO SUPPORT RIGHT.

2.—*Suit for cancellation of sale-deed—Assignment of interest.*] In a suit for cancellation of a sale-deed by the person whose name appeared on it as executant, it appeared that the plaintiff's interest in the property to which the instrument related had been assigned by her to another by a conveyance which contained certain covenants by her with regard to the land:—*Held*, that the plaintiff was not entitled to maintain the suit. IYYAPPA *v.* RAMALAKSHMAMMA.

[I. L. R. 13 Mad. 549

3.—*Malabar law — Suit by junior members of a tarwad — Suit of declaration of invalidity of kanom.*] The junior members of a Malabar *tarwad* brought a suit against their *karnavan* and senior *anandravan*, and certain persons claiming under a *kanom* granted by the former, for a declaration that the *kanom* was invalid and for possession of the land demised with mesne profits. The suit was filed nearly twelve years after the execution of the *kanom*:— *Held*, that the suit was maintainable by the plaintiffs. ANANTAN *v.* SANKARAN.

[I. L. R. 14 Mad. 101

4.—*Enhancement of rent, suit for—Right of a Hindu widow to sue for enhancement of rent as representing the estate of the deceased zemindar or as guardian of a minor son adopted to him by her.*] A Hindu widow, representing a zemindari interest in a *mehal*, sued for the rent upon a rent-paying tenure at an enhanced rate. She had, in former years, adopted a son to her deceased husband. The defendant objected throughout that this son (deceased in 1884) having been of full age in 1881

RIGHT OF SUIT—*continued.*

(2) INTEREST TO SUPPORT RIGHT—*concld.*

when this suit was brought, the widow was not entitled to sue at that time, he having that right:—*Held*, that the Courts below had rightly disallowed this objection. There was no sufficient evidence to show that the adopted son had attained majority when this suit was brought, and the plaintiff could sue either in her character as widow of the deceased or as guardian of the minor adopted son. SURJA KANT ACHARYA *v.* HEMANTA KUMARI.

[I. L. R. 20 Calc. 498
L. R. 20 I. A. 25

(3) AWARDS.

5.—*Suit on award—Award which cannot be filed under s.* 525, *Civil Procedure Code.*] Where an award cannot be filed and a decree obtained upon it under Civil Procedure Code, s. 525, a party is not precluded from suing upon it. GOPI REDDI *v.* MAHANANDI REDDI.

[I. L. R. 15 Mad. 99

(4) CHARITIES.

6.—*Civil Procedure Code* (*Act XIV of* 1882), *ss.* 30, 539—*Religious endowments—Removal of sajjadanashin — Contentious and non-contentious cases.*] Section 539 of the Code of Civil Procedure applies both to contentious and non-contentious cases. The decision of BEST and WEIR, JJ., in *Subbaya* v. *Krishna*, I. L. R. 14 Mad. 186, approved. The interest required to enable a person to sue under that section must be an existing one, and not a mere contingency: the mere possibility of an interest or the mere possibility of succession to the managership of the properties concerning which the suit is brought is not sufficient to give a right to sue. The right of worship of each worshipper in a Mahomedan mosque or religious endowment is an independent right wholly irrespective of the right of the other worshippers, and therefore, non-compliance by a worshipper with the provisions of s. 30 of the Code of Civil Procedure does not affect a suit for the removal of a trustee of a Mahomedan endowment. *Jan Ali* v. *Ram Nath Mundul*, I. L. R. 8 Calc. 32; *Jawahra* v. *Akbar Husain*, I. L. R. 7 All. 178; *Lutifunnissa Bibi* v. *Nuzirun Bibi*, I. L. R. 11 Calc. 33; and *Zafaryab Ali* v. *Bakhtawar Singh*, I. L. R. 5 All. 497, referred to. MOHIUDDIN *v.* SAYIDUDDIN *alias* NAWAB MEAN.

[I. L. R. 20 Calc. 810

7.—*Civil Procedure Code, s.* 539—*Removal of trustee—Jurisdiction of District Court.*] In a suit under the Civil Procedure Code, s. 539 in the District Court to remove the hereditary trustee of a public trust for breach of trust, the District Judge held that the suit could not be maintained. The plaintiff appealed, and the appeal came on before two Judges, who differed in opinion. The appeal was thereupon referred under the Civil Procedure Code, s. 575, and was heard by a Bench of three Judges, including the Judges who first heard the appeal:—*Held*, by BEST and WEIR, JJ. (MUTTUSAMI AYYAR, J., dissenting) that the suit

RIGHT OF SUIT—*continued.*

(4) CHARITIES—*continued.*

was maintainable under the Civil Procedure Code, s. 539. *Narasimha* v. *Ayyan*, I. L. R. 12 Mad. 157, considered. SUBBAYYA *v.* KRISHNA.

[I. L. R. 14 Mad. 186

8.—*Civil Procedure Code*, 1882, *ss.* 539, 15—*Public charitable trust—District Court, jurisdiction of.*] A church at Palayur and the property appertaining to it were in the possession of certain of the *yogakars* or parishioners, who had been elected *kaikars* or church-wardens, but whose election had since been superseded in favour of three other persons, who now sued to recover possession. The plaintiffs were Roman Catholics; and with the three persons above referred to were joined as plaintiffs, the Vicar Apostolic, the Vicar appointed to the church by him, and two other persons representing the Roman Catholic *yogakars*. The defendants were Syro-Chaldean Christians, and with the two persons above referred to were joined the Chor Episcopa, the Vicar appointed to the church by him, and four persons representing the other *yokogars*. The plaint was framed under the Civil Procedure Code, s. 539, and contained, besides a prayer for possession, prayers for declaration that the church, &c., was held on trust for worship according to the faith and discipline of the Church of Rome, and for injunctions against the defendants. The suit was tried by the District Judge in whose Court it was instituted, although the defendants pleaded to his jurisdiction on the ground that the Civil Procedure Code, s. 539, was inapplicable. He passed a decree for the plaintiffs, holding that the church, &c., was dedicated to the trust above stated, although it had been diverted from the purpose of that trust for a time:—*Held* (1) that the suit not being one brought by beneficiaries against trustees, or for any of the purposes mentioned in the Civil Procedure Code, s. 539, that section the had no application; (2) that. although the suit should, accordingly, have been brought in the Subordinate Court, the District Judge had jurisdiction to try it; (3) that the decree was right, on its appearing that the church, &c., had been held on the above trust from 1599 to 1882 with a doubtful interruption for one year, although the original trust may have been different. AUGUSTINE *v.* MEDLYCOTT.

[I. L. R. 15 Mad. 241

9.—*Civil Procedure Code* (*Act XIV of* 1882), *ss.* 539, 622 — *Suit by trustees to eject persons in wrongful possession of trust property—District Judge, jurisdiction of—Subordinate Judge, jurisdiction of—Superintendence of High Court.*] Section 539 of the Code of Civil Procedure (Act XIV of 1882) has no application to a suit brought by the trustees of a religious endowment to eject persons in wrongful possession of the trust property. The plaintiffs sued, as trustees of a temple, to recover certain trust property from defendants, who were alleged to be in wrongful possession. The defendants pleaded that they were owners of the property in dispute and applied

RIGHT OF SUIT—*continued.*

(4) CHARITIES—*continued.*

the income thereof for the purposes of the temple: they disputed the plaintiffs' title to the management or possession of the same. The Subordinate Judge, who tried the case in the first instance, held that the defendants were trustees with respect to the property in their possession, and that the suit was one of the nature contemplated by s. 539 of the Code of Civil Procedure. He, therefore, returned the plaint for presentation to the District Judge. This order was confirmed on appeal:—*Held*, that the Subordinate Judge had jurisdiction to entertain the suit. *Held*, also, that the High Court had power, under s. 622 of the Code Civil Procedure, to interfere in this case, the Subordinate Judge having failed to exercise a jurisdiction vested in him by law. *Held*, also, that the suit was not one falling under s. 539 of the Code of Civil Procedure, VISHVANATH GOVIND *v.* RAMBHAT.

[I. L. R. 15 Bom. 148

10.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 539—*Public, charitable and religious trust—Property set apart for religious and charitable uses—Trustee—Repudiation of the trust, effect of—Persons having a direct interest in the trust.*] The plaintiffs sued as relators, under s. 539 of the Code of Civil Procedure (Act XIV of 1882) to have the defendants removed from the management of a religious endowment, called the "Chinchvad *savasthan*," on the ground that they had mismanaged and misappropriated the trust funds in their hands. The plaintiffs also prayed for the appointment of new trustees, and for the settlement of a new scheme of management under the direction of the Court. The plaintiffs and defendant were the descendants of Shri Morya Gosavi, the original founder of the *savasthan*. Shri Morya Gosavi was a devotee of the deity Shri Mangal Murti. He dedicated a temple to the deity at the village of Chinchvad, and established an *annachhatra* and *sadavart* for feeding the poor and the destitute. He buried himself alive, and over his tomb a temple was built to perpetuate his memory. The Raja of Satara conferred on his descendants from time to time grants of lands, villages and *varshasans* for the maintenance of the shrine and of the charities connected with it. Votaries of the god Shri Mangal Murti visited the shrine in large numbers and took part in the annual festivals and celebrations held in honour of the founder of the *savasthan*. In course of time the Chinchvad *savasthan* became one of the most popular sacerdotal institutions of the Deccan. In 1744 the Peshwa made a *tahanama* (or award) by which he set apart one-half of the *savasthan* property exclusively for religious and charitable purposes, and distributed the other half among the descendants of the founder, to provide for their temporal wants. Subsequently to the date of this award, fresh grants were made to the manager of the *savasthan* by the ruling authorities of the day. In 1774 and 1776 A.D. the new acquisitions were divided on the principle adopted in the Peshwa's award—one-half being reserved exclusively for the *savasthan*, the other

RIGHT OF SUIT—*continued.*

(4) CHARITIES—*continued.*

half distributed among the heirs of the grantee. In 1874 the defendant 1 succeeded to the office of manager and trustee of the *savasthan*. Within a few years after entering upon his office, the defendant 1 in conjunction with his son, defendant 2, incurred heavy debts, mortgaged several villages belonging to the *savasthan*, and dealt with the *savasthan* income as if it was his own absolute property. The plaintiffs filed the present suit with the consent of the Advocate-General in 1883. The defendants pleaded (*inter alia*) that the property in suit was not burdened with a public religious or charitable trust; that they were not trustees, but owners, of the *savasthan*; and that the plaintiffs had not such direct interest in the property as to entitle them to sue under s. 539 of the Code of Civil Procedure. The District Judge, who tried the case, found that the *savasthan* was a public, religious and charitable institution; that the defendants were trustees in charge of the *savasthan* property, and that they were guilty of such gross misconduct as to make them unfit to act as trustees in future. He, therefore, passed a decree, directing the defendants to be removed from their office as trustees, appointed a new trustee in their place, and framed a scheme for the future management of the *savasthan*:—*Held*, on the evidence, that the management of the Chinchvad *savasthan*—consisting of the sacred shrines at the village, of Chinchvad, Moregav, Theur, and Sidhateks with their endowments—constituted a public, religious and charitable trust within the contemplation of s. 539 of the Code of Civil Procedure. *Held*, also, that the plaintiffs, being worshippers and devotees of the god Shri Mangal Murti, and being also descendants of the original founder of the endowment, had a direct interest in the trust, entitling them to sue under s. 539 of the Code of Civil Procedure. *Held*, further, that the defendants' assertion of their right to treat the trust property as their private estate, and to apply the trust funds to their private purposes, was sufficient to justify their removal from the trust. *Held*, further, upon the construction of the Peshwa's *tahanama* (or award), that it was the intention of the governing power in 1744 A.D., that thenceforth the Chinchvad *savasthan*—consisting of the shrines at Chinchvad, Moregav, Theur, and Sidhatek—should constitute a public *devasthan*, and that in setting apart a moiety of the property for the *savasthan*, the object was to provide a fund for the support of the four shrines and the expenses of the customary festivals, as well as of the *annachhatra* established at Chinchvad. CHINTAMAN BAJAJI DEV *v.* DHONDO GANESH DEV.

[I. L. R. 15 Bom. 612

11.—*Civil Procedure Code*, 1889, *s.* 539—*Public charitable trust—Consent of Advocate-General.*] Two out of five trustees appointed by a will to administer a public charitable trust brought this suit against the remaining three trustees praying (i) that the first defendant might be ordered to account for a specific sum of money of which it was alleged he had committed a breach of trust; (ii) that the first defendant might be removed

RIGHT OF SUIT—*continued.*

(4) CHARITIES—*concluded.*

from the office of trustee, and some other person appointed in his stead; and (iii) for such other or further relief as the nature of the case might require. The consent in writing of the Advocate-General to the institution of the suit under s. 539 of the Civil Procedure Code (XIV of 1882) had not been obtained:—*Held*, that the suit was one which fell within the purview of s. 539, and consequently, in the absence of such consent, was not maintainable. TRICUMDAS MULJI *v.* KHIMJI VULLABHDAS.

[I. L. R. 16 Bom. 626

12.—*Civil Procedure Code, s.* 539—*Suit to eject one claiming to be the jheer of a muth.*] Three disciples of a *muth* brought a suit, with the consent of the Advocate-General, under s. 539 of the Code of Civil Procedure, alleging that the defendant was in possession of the *muth* under a false claim of title as the successor to the late *jheer*, and praying that it be declared that he was not the duly appointed successor to the late *jheer*, and that an appointment to the vacant office of *jheer* be made by the Court:—*Held*, the that Civil Procedure Code, s. 539, was inapplicable to the suit. STRINIVASA AYYANGAR *v.* STRINIVASA SWAMI.

[I. L. R. 16 Mad. 31

13.—*Civil Procedure Code, s.* 539—*Suit to remove a mohunt—Trust for "Public religious purposes."*] Two plaintiffs instituted a suit, on behalf of themselves and 42 other persons named in a schedule to the plaint, against a *mohunt* of an *akhra*, to have certain alienations of property belonging to the idol set aside and the *mohunt* removed on the ground that he was wasting the idol's property and setting up an adverse title to it, and to have another *mohunt* and trustee of the property appointed in his place. The plaintiffs alleged that they and the 42 others named in the schedule were in the habit of worshipping the idol or of contributing to the worship and expenses of it, but it was clearly established by the evidence that any Hindu who chose was at liberty to give *puja* or render service and worship, and that others than the plaintiffs and the 42 persons named in fact did so, and that the plaintiffs and the persons named were, therefore, not the only persons interested in the suit. The suit was one to which the provisions of s. 539 of the Code applied, the suit being one based on the existence of a trust for public religious purposes and upon a breach of that trust and for the appointment of a new trustee, and being such should have been dismissed, not having been brought in the District Court or with leave of the Collector. SAJEDUR RAJA *v.* BAIDYANATH DEB.

[I. L. R. 20 Calc. 397

(5) CONTRACTS OR AGREEMENTS.

14.—*Act XXVII of* 1860, *s.* 5—*Security-bond—Suit by the heir of the deceased against surety—Assignment of security-bond.*] On the issue to defendant 1 of a certificate under Act XXVII

RIGHT OF SUIT—*continued.*

(5) CONTRACTS OR AGREEMENTS—*contd.*

of 1860, defendant 2 executed to the District Court a security-bond. The plaintiff, who had established his right to the monies collected under the certificate, then brought his suit on the security-bond to recover the amount so collected:—*Held*, that the plaintiff not having obtained an assignment of the indemnity bond from the District Court was not entitled to sue the surety. MAYAN *v.* CHATHAPPAN.

[I. L. R. 14 Mad. 473

15.—*Assignment of contract—Suit by assignee of contract for damages for non-delivery—Plea that assignment of contract was a sham—Sham assignment—Fraud—Right of third party to question* bonâ fides *of assignment—Assignment by deed—Demand for delivery—Contract Act IX of* 1872, *s.* 93.] On the 25th December 1886, the defendant contracted to deliver to the plaintiff on the 26th May 1887, one hundred bales of cotton at Rs. 196 per candy. On the 28th February 1887, the plaintiff assigned this contract to one *K*, and a few days afterwards, *viz.*, on the 7th March 1887, he became insolvent. In his schedule there was no mention of this contract, or its assignment, or of the receipt of any consideration for the assignment. *K*, as the beneficial assignee of the contract, subsequently called on the defendant to give delivery of the goods, and offered payment of the price; but the defendant, who was then aware of the plaintiff's insolvency, refused, on the ground that *K* was not a *bonâ fide* assignee of the contract for value; and that the assignment was a sham, and was not intended to pass the beneficial interest in the contract. A suit was then brought against the defendant by *K* claiming damages for breach of the contract. This suit was dismissed, on the ground that the assignment of the contract was fraudulent. The plaintiff knew of the dismissal of *K's* suit in 1887, but had never himself made any demand on the defendant for the performance of the contract. On the 6th November 1889, the plaintiff's petition in insolvency was dismissed for non-prosecution, and on the 18th November 1889, *K* re-assigned the contract to the plaintiff. The plaintiff then sued the defendant to recover damages for breach of the contract. He contended that his assignment to *K*, though in fraud of the Official Assignee and the creditors of the insolvency, was not in fraud of the defendant, and that by the dismissal of his petition the parties, as to their rights and liabilities under the contract, had been relegated to the position which they occupied prior to the plaintiff's insolvency:—*Held*, that the plaintiff was not entitled to recover damages from the defendant. There had been no demand for delivery by the plaintiff, or on his account, as required by s. 93 of the Contract Act. *K* had asked for delivery as beneficial owner, but the property had not passed to him by the assignment; and although the defendant would be bound to recognize an assignee who could establish his title of full ownership in the contract, he was under no obligation to recognize *K* when, as a fact, the beneficial interest

RIGHT OF SUIT—*continued.*

(5) CONTRACTS OR AGREEMENTS—*concld.*

in the contract still remained in the plaintiff, with whom the defendant had originally contracted. In England, where there has been an assignment by deed, the assigned property passes by force of the deed, and it cannot be impeached at law by the assignor or by third parties other than creditors, on the ground of its not being a real transaction: but where the assignment is not by deed, the true nature of it as a sham may be proved. In India it is in all cases open to third parties to show that such was the case. MULJI GOVINDJI *v.* NATHUBHAI HIRACHAND.

[I. L. R. 15 Bom. 1

16.—*Assignment of contract—Suit by assignee—Novation of contract—Contract Act, s.* 62*—Contract for forward delivery.*] The defendant was sued by the plaintiffs as assignees of one *S* for differences on certain contracts of purchase and sale of cotton and seeds. The defendant contended that the contracts in question were not assignable without his consent which had never been asked for nor given, and that the plaintiffs could not therefore maintain the action:—*Held*, that the objection was a good one. An assignment of a contract (as distinguished from a debt or other chose in action) to be effectual, must amount to a novation, and requires the assent of the other party to the contract (s. 62, Contract Act IX of 1872). The defect, however, was allowed to be cured by adding *S* as a plaintiff. The legal effect of the endorsement and handing over of such contracts considered. TOD *v.* LAKHMIDAS PURSHOTAMDAS.

[I. L. R. 16 Bom. 441

(6) COSTS.

17.—*Costs incurred in prosecuting case in Criminal Court—Damages, suit for.*] *Held* that a suit will not lie to recover as damages the expenses incurred by the plaintiff in prosecuting the defendant in a Criminal Court. FAZAL IMAM *v.* FAZAL RASUL.

[I. L. R. 12 All. 166

See MAHOMED ALI *v.* BAYAMA.

[I. L. R. 14 Bom. 100

(7) ENDOWMENTS, SUITS RELATING TO.

18.—*Act XX of* 1863, *s.* 7*—Madras Regulation VII of* 1817, *s.* 12*—Suit by a dharmkarta disaffirming the acts of his predecessor—Suit to set aside lease granted by former dharmakarta of temple—Limitation—Cause of action.*] The plaintiff, who had been appointed in 1886 by the Sub-Collector to be *dharmarkarta* of a Hindu temple, for which no committee had been appointed under the Religious Endowments Act, s. 7, sued in 1886 to recover possession of land demised to the defendant on a perpetual lease in or about 1856 by a previous *dharmakarta*, who died in 1885:—*Held*, that Madras Regulation VII of 1817 having been repealed as regards Hindu temples by Act XX of 1863, the appointment by the Sub-Collector gave the plaintiff no right to sue: accordingly, it was

RIGHT OF SUIT—*continued.*

(7) ENDOWMENTS, SUITS RELATING TO—*concluded.*

necessary to determine the question whether he had such right apart from that appointment. *Held*, that assuming he had such right, the plaintiff, since he did not derive title through his predecessor in office (the grantor of the lease), would be entitled to disaffirm his acts and could maintain the suit. The cause of action arose, and the period of limitation would therefore run not from the date of the lease, but from the date of the accession of the plaintiff to his office. MAHOMED *v.* GANAPATI.

[I. L. R. 13 Mad. 277

19.—*Adverse possession—Suit by a trustee of a devasom disaffirming the act of his predecessor—Limitation.*] The trustee of a Malabar *devasom*, who had succeeded to his office in June 1883, sued in 1887 to recover for the *devasom* possession of land which had been demised on *kanom* by his predecessor in February 1881, on the ground that the demise was invalid as against the *devasom*. The defendant had been possession of the land for more than twelve years, falsely asserting the title of *kanomdar* with the permission of the plaintiff's predecessor in office:—*Held* (1) the suit was not barred by limitation; (2) the plaintiff was entitled to maintain the suit for the purpose of recovering for the trusts of the *devasom* property improperly alienated by his predecessor. *Suppammal* v. *The Collector of Tanjore*, I. L. R. 12 Mad. 387, distinguished. VEDAPURATTI *v.* VALLABHA.

[I. L. R. 13 Mad. 402

(8) INSOLVENCY.

20.—*Right of insolvent or his assignee to sue—After acquired property—Official Assignee—Parties.*] One *R* became possessed of certain properties in 1872 and 1881. In 1866 *R* had presented a petition in insolvency, and a vesting order had been duly made. No final order of discharge was ever made; and *R* died in 1888. The plaintiffs sued, as the heirs of *R*, for their share in the said properties. It was objected (i) that looking to the insolvency of *R*, the plaintiffs had no interest in his estate; and (ii) that the Official Assignee, as the assignee of the estate and effects of *R* was a necessary party to this suit:—*Held*, that the properties in question, coming to *R* after his insolvency, vested in him subject only to the right and claim of the Official Assignee, should he think fit to assert it; and that the plaintiffs, as representatives of *R*, could maintain the action. *Held*, also, that the Official Assignee was not a necessary party to the suit, though, in case of a decree in plaintiffs' favour, notice thereof should be given to him by the Court. FATIMABIBI *v.* FATIMABIBI.

[I. L. R. 16 Bom. 452

(9) OBSTRUCTION TO PUBLIC HIGHWAY.

21.—*Suit for declaration of right to use street and injunction to remove obstruction—No proof of special damage.*] A gate was erected in a public

RIGHT OF SUIT—*continued.*

(9) OBSTRUCTION TO PUBLIC HIGHWAY—*concluded.*

street (by the permission of the Municipal Council), which obstructed the exercise by the plaintiff and the public of their right to resort to and draw water from a well. It appeared in evidence, although it was not alleged in the plaint, that the plaintiff had to use the land between the newly erected gate and the well when he repaired his house. The plaintiff not having obtained permission to sue under the Civil Procedure Code, s. 30, sued for a declaration of his right to use the street and draw water from the well and for an injunction compelling the removal of the gate:—*Held*, that the suit was within the rule precluding private actions for public wrongs without special damage alleged and proved, and was, accordingly, not maintainable. SIDDESWARA *v.* KRISHNA.

[I. L. R. 14 Mad. 177

(10) OFFICE OR EMOLUMENT.

22.—*Suit to establish right to offerings—Jurisdiction of Civil Court—Code of Civil Procedure* (*Act XIV of* 1882), *ss.* 11, *Explanation* 30.] A suit claiming a right to the regular offerings made out of the funds of a temple which are of a substantial value as emoluments is a suit of a civil nature within the meaning of the explanation to s. 11 of the Code of Civil Procedure. *Krishnama v. Krishnasami*, I. L. R. 2 Mad. 62, referred to; *Narayan Vithle Parab* v. *Krishnaji Sadashiv*, I. L. R. 10 Bom. 233, distinguished. KALI KANTA SURMA *v.* GOURI PROSAD SURMA.

[I. L. R. 17 Calc. 906

23.—*Karnam, hereditary office of—Enfranchisement of endowment — Devolution of land enfranchised.*] The holder of a hereditary office of *karnam* had two undivided sons, in favour of one of whom he resigned his office. Subsequently a revision of the village establishment took place, the new *karnam* was removed from the office, and the lands, which constituted its endowment having been enfranchised by the Inam Commissioner, a title-deed in respect of them was issued to him. After his death without issue his nephews sued to establish their right to the land:—*Held*, that the land passed to the grantee personally and not to his family, and, consequently, devolved, on his death, as private property. The plaintiffs therefore had no right of suit as regarded the property. *Venkata* v. *Rama*, I. L. R. 8 Mad. 249, followed. VENKATARAYADU *v.* VENKATARAMAYYA.

[I. L. R. 15 Mad. 284

24.—*Right to officiate at a marriage — Yajman, liability of—Cause of action for fees—Invasion of privileges.*] A village *joshi*, who is entitled by hereditary right to perform religious ceremonies at his *yajman's* house, can recover his fees if the ceremonies are performed, no matter by whom they may be performed. WAMAN JAGANNATH JOSHI *v.* BALAJI KUSAJI PATIL.

[I. L. R. 14 Bom. 167

RIGHT OF SUIT—*continued.*

(11) ORDERS, SUITS TO SET ASIDE.

25.—*Order determining title to money deposited in Court — Civil Procedure Code, ss.* 272, 278—283.] A suit will lie to set aside an order such as is contemplated by the proviso to s. 272 of the Code of Civil Procedure, that is, an order determining any question of title or priority as between the decree-holder and any other person in respect of money in deposit in a Court of Justice. The mode of investigation and the nature of the order to be made under s. 272, and the extent to which such an order is final, are provided for in ss. 278—283 of the Code of Civil Procedure. TIKUM SINGH *v.* SHEO RAM SINGH.

[I. L. R. 19 Calc. 286

(12) SALE FOR ARREARS OF REVENUE.

26.—*Payment of Government revenue by mortgagees in possession to save the property—Payment of mortgage-money into Court by mortgagors and relinquishment of possession by mortgagees—Subsequent suit by mortgagees to recover the Government revenue paid by them by sale of the mortgaged property—Act IV of* 1882 (*Transfer of Property Act*), *s.* 83.] The plaintiffs were mortgagees in possession of certain shares in a village under a mortgage which, as to the principal amount advanced, was a simple mortgage, as to the interest, a usufructuary mortgage. The mortgagees, to save the property from sale, paid up certain arrears of Government revenue. Subsequently the defendant, who was the representative of the mortgagors, under s. 83 of the Transfer of Property Act paid the original sum due under the mortgage into Court. The mortgagees withdrew the money so paid in and deposited the mortgage-deed in Court. The mortgagees then, after relinquishing possession of the mortgaged property, sued to recover the money which they had paid as Government revenue by sale of the mortgaged property:—*Held* that, though the mortgagees might originally have treated the amount paid by them as Government revenue as part of the mortgage-money, they did not by such payment obtain a lien independently of their position as mortgagees, and when once they had abandoned their lien on the mortgaged property by accepting the money paid into Court by the mortgagors and by relinquishing possession of the mortgaged property, they could not afterwards revive it; and their suit, which was for realisation of the Government revenue paid by them by sale of the mortgaged property, must fail. *Semble*, a mortgagee, who had given up his lien under circumstances similar to those above described, might bring a simple money-suit to recover money paid by him to save the property from sale in execution for arrears of Government revenue. *Kinu Ram Das* v. *Mozaffer Husain Shaha*, I. L. R. 14 Calc. 809; *Lachman Singh* v. *Salig Ram*, I. L. R. 8 All. 384; *Achut Ramchandra Pai* v. *Hari Kamti*, I. L. R. 11 Bom. 313; *Girdhar Lal* v. *Bhola Nath*, I. L. R. 10 All. 611; *Parsotam Das* v. *Jaijit Singh*, Weekly Notes, 1890, p. 90; *Nikka Mal* v. *Sulaiman Shaikh Gardner*, I. L. R. 2 All. 193; *Kristo Mohinee Dossee* v. *Kaliprosono Ghose*, I. L. R. 8 Calc. 402, and

RIGHT OF SUIT—*concluded.*

(12) SALE FOR ARREARS OF REVENUE—*concluded.*

Nugenderchunder Ghose v. *Kaminee Dossee*, 11 Moo. I. A. 241, referred to. ANANDI RAM *v.* DUR NAJAF ALI BEGAM.

[I. L. R. 13 All. 195

(13) SALE IN EXECUTION OF DECREE.

27.—*Distribution of proceeds of execution-sale—Sale in execution of decree enforcing mortgage—Priority of mortgages—Act IV of* 1882 (*Transfer of Property Act*), *s.* 80.] *A* mortgaged certain property to *B*, in July 1874, to *C* in March 1877, and again to *B* in November 1877. *B* obtained a decree directing the sale of the property in satisfaction of his two mortgages, and it was sold accordingly. Subsequent to the sale, *C* obtained a similar decree upon his mortgage, and having unsuccessfully applied in his own suit to have his decree satisfied out of the sale-proceeds after payment of *B's* first mortgage of July 1874, brought a suit under the last paragraph but one of s. 295 of the Civil Procedure Code to recover the amount received by *B* in respect of *B's* mortgage of November 1877:—*Held*, that to read the words "an incumbrance" in s. 295, proviso (*c*) of the Civil Procedure Code as "an incumbrance or incumbrances," so as to give priority to *B's* mortgage of November 1877, over *C's* earlier mortgage of March 1877, would be to defeat the intention of the Legislature as expressed in that section and also in s. 80 of the Transfer of Property Act, and that *C* was entitled to maintain the suit. MITTHU LAL *v.* KISHAN LAL.

[I. L. R. 12 All. 546

RIGHT OF WAY.

See PRESCRIPTION—EASEMENTS—RIGHT OF WAY.

[I. L. R. 14 All. 185

[I. L. R. 17 Bom. 745

1.—*Grant of land to build dwelling-house—Implied right to build privy—Way of necessity for sweepers—Caste prejudices—Modification of English law.*] A plot of land in the centre of the defendant's *oart* was granted to plaintiff's predecessor in title on *fazendari* tenure, to build a dwelling upon. A hut was accordingly built thereon. No privy was built with or attached to the hut, the occupants of the hut using the *oart*, or neighbouring *oarts*, for natural purposes. The plaintiff bought the hut, knocked it down, and proceeded to build a substantial dwelling with a privy on the site of the old hut. Defendant denied his right to build a privy, or to have any right of way for sweepers to the said privy when built:—*Held*, that the suitable enjoyment of the hut, when it was originally built, implied the use of a privy, whenever the occupants of the hut should think fit to build one; and that, therefore, the plaintiff was entitled to build a privy, and consequently also to a way of necessity for a

RIGHT OF WAY—*continued.*

sweeper to have access to the privy when built. The occupants of the old hut had been allowed, as a way of necessity, and had always used as a means of access to that portion of the site of the old hut on which the new privy was now being built, a path which went in a straight line from the gate in the outer wall of the *oart* to the front door of the hut, and thence, skirting the hut, to the site of the new privy. The plaintiff now claimed a wright of way for his sweeper in a direct line from the outer gate to the new privy, thus avoiding the front entrance of the house. *Held*, that, having regard to the class of persons who had lived in the old hut (who were of low caste), there could have arisen, up to the present time, no reasonable necessity for two ways to the site in question, and, therefore, the plaintiff was limited to the old way enjoyed by his predecessor in title. *Quære*—Whether, if the lessees had been persons belonging to one of the higher castes, it would not be right to take into consideration the prejudice entertained by members of such castes against being brought into close proximity with persons following the occupation of a sweeper, and, if necessary, to modify the general principle of English law, which lays down that a grantee is only entitled to one way of necessity. ESUBAI *v.* DAMODAR ISHVARDAS.

[I. L. R. 16 Bom. 552

2.—*Place dedicated by owner of land for convenience of occupiers of adjoining houses—User of such open space—Covenant or grant presumed—Easement—Public land—Encroachment—Injunction.*] The plaintiff and defendant occupied houses situated in the same lane and opposite each other. Close to both houses was an open space in which a cross had stood. The plaintiff alleged that the said vacant space was originally intended for, and had always been used by the occupants of his house and the residents in the lane in common for, the purposes of recreation, save where the cross stood. The cross had been for many years visited by Christian worshippers who prayed and worshipped there. The plaintiff also alleged that, in addition to the general use of the open space, he and his predecessors in title and the occupants of his said house had for more than twenty years used the open space as a footway and a way for carriages and other vehicles to approach the said house and to stand and be able to turn there. He complained that the defendant had wrongfully removed the cross, and enclosed the greater portion of the said open space, and he prayed for a declaration that he and the occupants of his house were entitled to the use of the said space for purposes of recreation, and as a footway and carriageway and for an injunction. The defendant pleaded that the whole of the open space formerly belonged to a Portuguese religious confraternity who were the *fazendars* of both his property and the plaintiff's; that this confraternity had permitted the cross to be erected on the land, at which the residents of the houses of the plaintiff and defendant and other adjacent houses who were then Portuguese used to assemble

RIGHT OF WAY—*concluded.*

and worship; that the Portuguese having left the locality the cross was removed, and the part of the open space which had been enclosed by the defendant had been sold to him by the confraternity in 1887. He denied the use of the space alleged by the plaintiff:—*Held*, that the evidence was not sufficient to establish that the land in dispute had been dedicated to the public, but that, on the evidence, the Court was justified in presuming and ought to presume a covenant on the part of the *fazendari* owners of the *oart* to keep the lane, including the upper end of it, open for the use of the owners of the houses abutting upon it. Such a covenant should be presumed equally in the case of a landowner giving land for building purposes to *fazendari* tenants in a perpetual tenure at a fixed rent, and in the case of a owner selling land out and out for building purposes. RANCHORDAS AMTHABHAI *v.* MANEKLAL GORDHANDAS.

[I. L. R. 17 Bom. 648

3.—*Easement of necessity—Easements Act (V of 1882)—Act I of 1872, s. 114, Illustration (g)—Presumption against plaintiff from failure to produce his title-deeds.*] The plaintiffs were owners of an hotel, and the defendant of certain adjacent property. The two properties had at one time been united, and at that time the manager of the hotel on behalf of the owner used to obtain water for the purposes of the hotel from a certain spring by means of a road which ran over land which subsequently became the defendant's. There was another but smaller and much less convenient path from the hotel to the spring. The plaintiffs became owners of their portion of the property in 1886, and the defendant of his portion in 1888. The plaintiffs continued to use the above-mentioned road through the defendant's property for the purpose of getting water from the hotel until 1889, when the defendant refused to permit them any longer to use the road. The plaintiffs accordingly sued the defendant for a declaration of their right of way over the said road; but refused to put in evidence the deed under which they became owners of the hotel property:—*Held*, upon these facts, that the plaintiffs were not entitled to any right of way over the land in question. Owing to the non-production by the plaintiffs of their title-deed, it must be presumed as against them that the evidence afforded thereby would be unfavourable to their claim, and no right of way in favour of the plaintiffs could be shown to arise otherwise, either as an easement of necessity or as an easement the intention to grant which might be inferred. *Charu Surnokar* v. *Dokouri Chunder Thakoor*, I. L. R. 8 Calc. 956, considered. *Rajroop Kuar* v. *Abul Hossein*, I. L. R. 6 Calc. 394; L. R. 7 I. A. 240; *Kay* v. *Oxley*, L. R. 10 Q. B. 360; *Polden* v. *Bastard*, L. R. 1 Q. B. 156; *Worthington* v. *Gimson*, 29 L. J. Q. B. 116; *Hinchcliffe* v. *Earl of Kinnoul*, 5 Bing. N. C. 25; *Morris* v. *Edgington*, 3 Taunt 24; *Barkshire* v. *Grubb*, L. R. 18 Ch. D. 616; and *Bayley* v. *G. W. R. Co.*, L. R. 26 Ch. D. 434, referred to. WUTZLER *v.* SHARPE.

[I. L. R. 15 All. 270

RIGHT TO BEGIN.

See ONUS PROBANDI—POSSESSION AND PROOF OF TITLE.

[I. L. R. 18 Calc. 201

—*Reference to High Court by Presidency Magistrate—Onus probandi—Practice—Criminal Procedure Code (Act X of 1882), s 432.*] In a reference by a Presidency Magistrate to the High Court as to whether, on the facts stated, any offence has been committed by an accused person, it lies on the prosecution to make out that an offence has been committed, and under the circumstances the prosecution must begin. QUEEN-EMPRESS *v.* HARADHAN *alias* RAKHAL DASS GHOSH.

[I. L. R. 19 Calc. 380

RIGHT TO USE OF WATER.

—*Irrigation channels—Power of Collector to regulate water-supply.*] In a suit between ryots holding lands under Government, in which the Collector of the district was joined as second defendant, it appeared that the first defendant, in pursuance of an order of the Sub-Collector, made on a petition preferred by him, had opened a new irrigation channel, thereby materially diminishing the supply of water necessary for the cultivation of the plaintiff's land and causing damage to him. The lower Court passed a decree for damages and issued an injunction directing that the channel be closed: *Held*, that the order of the Sub-Collector was in excess of his powers. RAMACHNDRA *v.* NARAYANASAMI.

[I. L. R. 16 Mad. 333

RIOTING.

See CULPABLE HOMICIDE.

[I. L. R. 18 Calc. 484

See DACOITY.

[I. L. R. 15 All. 299

See SENTENCE—CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105

[I. L. R. 17 Bom. 260

——, Counter charges of—

See CRIMINAL PROCEEDINGS.

[I. L. R. 20 Calc. 537

1.—*Penal Code, ss. 24, 147, 391 — Dacoity — Want of dishonest intention.*] Where several Hindus acting in concert forcibly removed an ox and two cows from the possession of a Mahomedan not for the purpose of causing "wrongful gain" to themselves or "wrongful loss" to the owner of the cattle, but for the purpose of preventing the killing of the cows:—*Held*, that they could not properly be convicted of dacoity, but only of riot. QUEEN-EMPRESS *v.* RAGHUNATH RAI.

[I. L. R. 15 All. 22

2.—*Rights of true owners against person in wrongful possession—Affray, evidence as to nature of.*] When a party is in possession of land for four or five days, though it may be in wrongful

RIOTING—*concluded.*

possession, another party, although claiming to be the rightful owner, is not entitled to go in force to turn him out, much less is he entitled to take armed men with him for that purpose. In an affray specific evidence as to the acts of each fighter cannot be expected, but only general evidence as to the accused taking part in it, and persons who, as in this case, punted the boats on which the fight took place, and in whose interests the fight on the boats took place, were held to be just as blameworthy as the men who struck the blows. MOHER SHEIKH *v.* QUEEN-EMPRESS.

[I. L. R. 21 Calc. 392

3.—*Right of private defence—Penal Code, s.* 146 *—Unlawful distraint.*] A landlord who had not tendered to his tenant such a *pottah* as the latter was bound to accept under the Madras Rent Recovery Act, distrained his cattle for arrears of rent, the assistance of the Police having been procured for the purpose. The tenant, with the assistance of eleven other persons, forcibly obstructed the removal of the cattle which had already been actually seized and driven for some yards. They were charged with the offence of rioting and convicted:—*Held*, that there was no right of private defence of property, and that the conviction was right. QUEEN-EMPRESS *v* RAMAYYA.

[I. L. R. 13 Mad. 148

4.—*Penal Code, s.* 154—*Liability of owner or occupier of land on which an unlawful assembly is held.*] It is not necessary, in order to render the owner of land on which a riot takes place criminally liable, that he should be aware of the likelihood of such an occurrence. That his *karinda* should have taken an active part in the riot is sufficient to warrant the conviction of the owner, under s. 154 of the Penal Code. QUEEN-EMPRESS *v.* PAYAG SINGH.

[I. L. R. 12 All. 550

RIVER.

——, Change in course of—

See ACCRETION.

[I. L. R. 13 Mad. 369

See FISHERY, RIGHT OF.

[I. L. R. 17 Calc. 963

——, Obstructions in—

See NUISANCE—PUBLIC NUISANCE UNDER PENAL CODE.

[I. L. R. 20 Calc. 665

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ROAD CESS, SALE FOR ARREARS OF.

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R. 18 Calc. 125

ROAD CESS ACT (BENGAL ACT IX OF 1880).

——, s. 47.

See APPEAL—ACTS—BENGAL TENANCY ACT.

[I. L. R. 20 Calc. 254

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See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF AND MODE OF DEALING WITH EVIDENCE.

[I. L. R. 13 Mad. 426

RULES OF HIGH COURT, BOMBAY.

——, Rule I under s. 287 of Civil Procedure Code.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 14 Bom. 369

——, Rule of Court No. 64.

See WITHDRAWAL OF SUIT.

[I. L. R. 15 Bom. 160

——, Rule No. 183.

See EXECUTION OF DECREE—MODE OF EXECUTION—COSTS.

[I. L. R. 17 Bom. 514

——, Rule No. 183.—*Costs—Order for payment to the attorney of taxed costs against heir or representative of client—Attorney and client—Civil Procedure Code, Ch. XIX.*] Rule 183 of the High Court Rules provides that "an attorney, when he has taxed his bill or costs against his client, may obtain an order in Chambers for payment of the sum allowed on taxation, and such order may be executed under Ch. XIX of the Code of Civil Procedure:—*Held*, that the heirs or representatives of the client are not included in the words of this rule, and the attorney's claim cannot, under it, be enforced against them. ASSUR PURSHOTAM *v.* RUTTONBAI.

[I. L. R. 16 Bom. 152

IN RE PREMJI TRIKUMDAS.

[I. L. R. 17 Bom. 514

RULES OF HIGH COURT, CALCUTTA.

See PRACTICE—CIVIL CASES—PAPER BOOKS.

[I. L. R. 17 Calc. 289

——, Rule No. 697.

See PRACTICE—CIVIL CASES—LETTERS OF ADMINISTRATION.

[I. L. R. 20 Calc. 879

RULES MADE UNDER ACTS.

——, Act XXIV of 1839, Rules 18 and 20 of Agency Rules under.

See REVISION—CIVIL CASES—GENERAL CASES.

[I. L. R. 16 Mad. 229

RULES MADE UNDER ACTS—*continued.*

——, Act XI of 1846—Rule 44 of Rules made under s. 3.

See APPEAL IN CRIMINAL CASES—ACTS—ACT XI OF 1846.

[I. L. R. 15 Bom. 505

——, Act V of 1876—Government of India, Notification 173 of 14th March 1889.

See REFORMATORY SCHOOLS ACT, s. 22.

[I. L. R. 15 All. 208

——, Court-Fees Act.

See COURT-FEES ACT, s. 20.

[I. L. R. 17 Calc. 281

——, Criminal Procedure Code, s. 16.

See BENCH OF MAGISTRATES.

[I. L. R. 16 Mad. 410

[I. L. R. 20 Calc. 870

——, Stamp Act (I of 1879).

See STAMP ACT, s. 3, CL. 10.

[I. L. R. 14 Mad. 32

[I. L. R. 13 All. 66

[I. L. R. 18 Calc. 39

See STAMP ACT, s. 61.

[I. L. R. 18 Calc. 39

1.—*Civil Procedure Code*, 1882, *s.* 320—*Civil Procedure Code Amendment Act* (*VII of* 1888), *s.* 30—*Rules framed by the Local Government under s.* 320 *of Act XIV of* 1882 *as amended by s.* 30 *of Act VII of* 1888, *effect of—Sale in execution of decree—Confirmation of sale—Collector's power to confirm or set aside a sale.*] The rules framed by the Local Government in 1890 in exercise of the powers conferred by s. 320 of the Code of Civil Procedure, as amended by s. 30 of Act VII of 1888, are not retrospective in their operation so as to give the Collector the power to confirm a sale held before the date of issue of the rules. Nor do the rules authorize the Collector to set aside a sale. On 27th July 1889, the property in dispute was sold by the Collector in execution of a decree which was referred to him under s. 320 of the Code of Civil Procedure (Act XIV of 1882). On 23rd September 1889, the Collector set aside the sale, on the ground that the auction-purchaser had purchased the property for, and on behalf of, the decree-holder. Thereupon the auction-purchaser applied to the Court which had passed the decree, complaining of the Collector's proceeding, and praying for a confirmation of the sale. The Court asked the Collector to return the record of the case, but this he refused to do, on the ground that he had extended the time given by the decree to the judgment-debtor to redeem. In January 1890, the Local Government framed new rules in exercise of the powers conferred by

RULES MADE UNDER ACTS—*concluded.*

s. 320 of the Code of Civil Procedure as amended by s. 30 of Act VII of 1888. One of these rules empowered the Collector to confirm a sale held in execution of a decree transferred to him. In April 1890, the auction-purchaser again applied to the Court for a confirmation of the sale. This application was rejected, on the ground that under the new rules framed by Government the Collector alone had the power to confirm the sale:—*Held*, that the rules in question had no application to the present case, the sale having been held before the rules were promulgated. The Civil Court was, therefore, competent to confirm the sale. *Held*, further, that even if the rules did apply, they did not empower the Collector to set aside the sale, or extend the time given by the decree to the judgment-debtor to redeem. GANPATRAM MOTIRAM *v.* ADAMJI.

[I. L. R. 15 Bom. 322

See BAI AMTHI *v.* MADHAV MANOR.

[I. L. R. 15 Bom. 694*n*

2.—*Civil Procedure Code*, *s.* 320—*Transmissio of decree to Collector for execution—Power of Local Government to make rules for regulating procedure of Collector—Rule providing for appeal from Collector to Commissioner—Rule No.* 17, *cl. XIX of* 12*th November* 1883, *validity of—Act VII of* 1888 (*Civil Procedure Code Amendment Act*), *s.* 30—*Act XIX of* 1873 (*N.-W. P. Land Revenue Act*), *s.* 243.] The authority conferred upon the Local Government by s. 320 of the Civil Procedure Code prior to the amendment of that section by s. 30 of the Civil Procedure Code Amendment Act (VII of 1888), to make rules for regulating the procedure of the Collector in executing decrees transmitted to him, included power to make a rule providing for an appeal from the Collector's orders. Clause XIX of Rule 17 which was added to the Rules (No. 671 of 30th August 1880) published in the N.-W. P. and Oudh Gazette of the 14th September 1880, by a notification in the Gazette of the 17th November 1883, and which made the order of a Collector confirming a sale appealable to the Commissioner of the Division, was therefore not *ultra vires* of the Local Government. *Madho Prasad* v. *Hanasa Kuar*, I. L. R. 5 All. 314, referred to. Section 243 of the N.-W. P. Land Revenue Act (XIX of 1873) does not apply to such orders passed by a Collector. TAKADDUS FATIMA *v.* BALDEO DAS.

[I. L. R. 12 All. 564

RYOT.

See BENGAL TENANCY ACT, s. 5.

[I. L. R. 21 Calc. 129

——, Non-occupancy—

See BENGAL TENANCY ACT, s. 3.

I. L. R. 17 Calc. 45

See BENGAL TENANCY ACT, s. 5.

[I. L. R. 20 Calc. 708

SALE FOR ARREARS OF RENT.

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See BENGAL TENANCY ACT, s. 13.

[I. L. R. 18 Calc. 360

See BENGAL TENANCY ACT, s. 173.

[I. L. R. 21 Calc. 554

See BENGAL TENANCY ACT, s. 174.

[I. L. R. 18 Calc. 231, 255, 481

See CIVIL PROCEDURE CODE, s. 244—QUESTIONS IN EXECUTION OF DECREE.

[I. L. R. 17 Calc. 769

[I. L. R. 19 Calc. 341

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[I. L. R. 17 Calc. 301

See LANDLORD AND TENANT—TRANSFER BY TENANT.

[I. L. R. 14 Bom. 384

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.

[I. L. R. 19 Calc. 787

See CASES UNDER MADRAS RENT RECOVERY ACT.

See TRESPASS.

[I. L. R. 19 Calc. 267

(1) RIGHTS AND LIABILITIES OF PURCHASERS.

1.—*Priority of auction-purchasers—Sale set aside by an ex-parte decree and afterwards confirmed—Notice.*] The plaintiff and the defendant purchased the same tenure at successive sales, held in execution of two decrees under the provisions of s. 59 of Act VIII of 1869, for arrears of rent due in respect of different periods. Defendants sale was first in point of time, but was set aside on the judgment-debtor obtaining an *ex-parte* decree against the defendant. The suit was, however, restored and ultimately dismissed, and the defendant's purchase remained undisturbed. In the meantime, however, after the *ex-parte* decree, but before the dismissal of that suit, the tenure had been again sold for further arrears of rent, which had accrued before the defendant's purchase and was bought by the plaintiff:—*Held*, that the defendant's title must prevail, being prior in point of time, and that the defendant was under no obligation to discharge the arrears of rent for which the second decree was obtained, or to give notice of his purchase to the plaintiff. RAM CHUNDER SADHU KHAN *v.* SAMIR GAZI.

[I. L. R. 20 Calc. 25

SALE FOR ARREARS OF RENT—*contd.*

(1) RIGHTS AND LIABILITIES OF PURCHASERS—*continued.*

2.—*Patni tenure, sale of—Registration in zemindar's serishta—Rights of zemindar—Bengal Regulation VIII of* 1819, *ss.* 5, 7—*Bengal Tenancy Act (VIII of* 1885), *s.* 13.] A *patni taluk* was sold in execution of a decree, but the auction-purchaser, although he obtained possession, did not get himself registered in the zemindar's *serishta*. In a suit by the zemindar against the former holder of the *patni* for rent due for a period previous to the sale, *held*, that the suit lay against him, and that the rights of the zemindar were not affected by the existence of the remedy provided by s. 7 of Bengal Regulation VIII of 1819. *Lukhinarain Mitter* v. *Khetter Pal Singh Roy*, 13 B. L. R. 146, referred to. SURENDRONATH PAL CHOWDHRY *v.* TINCOWRI DASI,

[I. L. R. 20 Calc. 247

3.—*Liability of auction-purchaser for arrears of rent prior to purchase—Bengal Tenancy Act (VIII of* 1885), *ss.* 65 *and* 169, *cl. c—Rent, suit for.*] The plaintiffs sued the first five defendants for arrears of rent due in respect of a certain tenure, and obtained a decree on the 16th of April 1888. In execution of that decree the tenure was sold on the 8th April 1891, the defendants 6, 7, and 8 being the auction-purchasers. On the 18th of April 1891 the plaintiffs sued all eight defendants for the arrears of rent which had become due between the 16th April 1888 and the 8th April 1891:—*Held*, that the auction-purchasers (defendants 6, 7 and 8) were not liable, the arrears of rent sued for having become due prior to their purchase. FAEZ RAHAMAN *v.* RAMSKUH BAJPAI.

[I L. R. 21 Calc. 169

4.—*Sale on basis of decree on compromise—Auction-purchaser, title of—Liability of purchaser for rent accruing due after his purchase, but before confirmation of sale—Effect of compromise as against purchaser—Rent, accrual of—Bengal Tenancy Act, s.* 53.] A tenant, when sued for arrears of rent of a *jote* compromised the case by executing a *solehnama* agreeing to pay rent at 13 annas per *bigha* on 4,300 *bighas*. Subsequently the *jote* was sold, in execution of a decree passed on the basis of the *solehnama*, and was purchased by the defendant on the 20th March 1889, the sale being confirmed on the 7th August 1889. In a suit instituted by the landlord against the auction-purchaser for arrears of rent for the whole year 1296 (13th April 1889 to 12th April 1890), *held*, that the purchaser was liable for the whole instalment of rent accrued due after the date of his purchase, but before the confirmation of the sale, notwithstanding that his title was not perfected until the latter date. Rent is to be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy or, in the absence of any contract, according to the general law laid down in s. 53 of the Bengal Tenancy Act:—*Held*, also, that he was liable for rent under the terms of the *solehnama* irrespective of any question as to

SALE FOR ARREARS OF RENT—*contd.*

(1) RIGHTS AND LIABILITIES OF PURCHASERS—*concluded.*

whether the quantity of land there mentioned was correct or not. SATYENDRA NATH THAKUR *v.* NILKANTHA SINGHA,

[I. L. R. 21 Calc. 383

(2) SURPLUS-PROCEEDS OF SALE.

5.—*Sale of patni—Mortgage security, conversion of—Surplus sale-proceeds, charge of mortgagee upon—Transfer of Property Act (IV of* 1882), *s.* 73.] A *patni taluk* having been sold for arrears of rent under Regulation VIII of 1819, the surplus sale-proceeds held in deposit in the Collectorate were drawn out at intervals by the holders of money decrees against the *patnidars*. The plaintiff, who held a mortgage of the *taluk*, sued to recover from these decree-holders the amount of his unsatisfied claim. Two of the defendants pleaded that, over and above the amount taken by them, there remained in deposit sufficient money to satisfy the plaintiff, and that the other unsecured creditors who had drawn out this balance should alone be held liable.—*Held*, that the surplus sale-proceeds were to be regarded as the shape into which the plaintiff's security was converted, and as before such conversion the security could not be split up into parts, the plaintiff was entitled to realise the balance due to him out of the whole of the surplus, as otherwise his security would be diminished. GOSTO BEHARY PYNE *v.* SHIB NATH DUTT.

[I. L. R. 20 Calc. 241

(3) SETTING ASIDE SALE.

(*a*) IRREGULARITY.

6.—*Bengal Regulation VIII of* 1819, *s.* 8—*Service and publication of notice of sale—Irregularities in preliminaries to sale—Petition for sale—Certificate of Munsif when service is sworn to before him—Form of notice of sale in mid-year sales for six months' arrears.*] All the requirements in cl. 2, s. 8 of Regulation VIII of 1819 must be imported into cl. 3 of that section *mutatis mutandis*. Where, therefore, the zemindar is proceeding under cl. 3 to obtain a mid-year sale for six months' arrears of rent, the service of notice of sale is a condition precedent to the sale being held. Such notice must show, as provided by that clause, that the sale may be prevented by payment of the whole of the balance due, *or of three-fourths* of such balance. In such a case a notice, which stated that the sale would take place unless the whole of the balance was paid, as if the zemindar was proceeding under cl. 2 for the whole year's arrears, was held to be a bad notice, and a non-compliance with a substantial requirement of the Regulation such as to justify the reversal of the sale. The publication of the petition to the Collector containing a specification of the balance of rent due, by sticking it up in some conspicuous part of the *kutcheri* as required by cl. 2, s. 8 of the Regulation, is not a substantial portion of the process to be observed by the zemindar previous to a sale for arrears of rent; non-compliance with that provision, therefore, is not a ground for setting aside the sale. For the same reason the non-presentation of the petition on the precise day (1st Kartick), specified in cl. 3, s. 8, affords no ground for setting aside the sale. The presentation of the petition on the 2nd Kartick, when the 1st was a Sunday, was held to be a sufficient compliance with the section. The words "certificate to which effect" in the portion of cl. 2, s. 8, relating to the procedure in case of refusal by the village people to attest the publication of the notice of sale, mean a certificate to the effect that the peon did come before the Munsif or Police-officer, as the case may be, and did make voluntary oath as to the service of the notice. Where the peon, after serving the notice, made an affidavit as to the mode of service, and took the affidavit before the Munsif, to whom it was read and who then signed it, there was held to be a sufficient certificate to satisfy the requirements of the section. AHSANULLA KHAN BAHADOOR *v.* HURRI CHURN MOZOOMDAR.

[I. L. R. 17 Calc. 474

SALE FOR ARREARS OF RENT—*contd.*

(3) SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

Held by the Privy Council affirming this decision:—The power of sale given to the zemindar by Regulation VIII of 1819, upon default in payment of the rent by a *patnidar*, is only exercisable subject to a condition as to notice to the defaulter. To bring into operation the provisions of cl. 3 of s. 8, relating to a mid-year sale, the serving a notice, according to that section, intimating to the *patnidar* that payment of three-fourths of the balance due will prevent a sale, is a condition precedent to the sale. A notice relating to a mid-year sale was *held* to be essentially defective, as it followed cl. 2 instead of cl. 3 of s. 8, and intimated that payment of the whole arrears would be the only way to stay the sale. This objection was taken for the first time in the Appellate Court:—*Held*, that as a defect fatal to the whole proceeding appeared in the notice, the objection was competently taken in that Court. *Macnaghten* v. *Mahabir Pershad Singh*, I. L. R. 9 Calc. 656; L. R. 10 I. A., 25, distinguished. AHSANULLA KHAN BAHADUR *v.* HARICHARAN MOZUMDAR.

[I. L. R. 20 Calc. 86

[L. R. 19 I. A. 191

7.—*Bengal Regulation VIII of* 1819, *cl.* 3, *ss.* 8, 14—*Patni sale—Notices, Publication of—Ostum sale.*] It is imperative that the notices referred to in cl. 3, s. 8 of Regulation VIII of 1819, be published previously to the 15th Kartick. Non-compliance with such direction is a "sufficient plea" within the meaning of s. 14 of the Regulation for reversal of a sale held thereunder. *Matungee Churn Mitter v. Moorrary Churn Ghose*, I. L. R. 1 Calc. 175; 24 W R. 453, dissented from. SURNOMOYI DEBIA *v.* GRISH CHUNDER MOITRA.

[I. L. R. 18 Calc. 363.

SALE FOR ARREARS OF RENT—*contd.*

(3) SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*concluded.*

8.—*Bengal Regulation VIII of* 1819, *s.* 8, *cl.* 2—*Onus of proof of publication of notice before sale of patni taluk for arrears of rent.*] In a suit to set aside a sale of a *patni taluk*, held under the provisions of s. 8 of Regulation VIII of 1819, on the ground that the notice required by sub-section 2 of that section had not been duly published, it lies upon the defendant to show that the sale was preceded by the notice required by that sub-section, the service of which notice is an essential preliminary to the validity of the sale. In such a suit, where there was no evidence one way or the other to show that the notice required by that sub-section to be stuck up in some conspicuous part of the Collector's *kutcheri*, had been published:—*Held*, that the plaintiff was entitled to a decree setting aside the sale. HURRO DOYAL ROY CHOWDHRY *v.* MAHOMED GAZI CHOWDHRY.

[I. L. R. 19 Calc. 699

9.—*Bengal Regulation VIII of* 1819, *ss.* 8, 14, *cl.* 2—*Publication of notice in the Collector's kutcheri—Non-publication of notice in manner prescribed, effect of, on the validity of a sale of a patni tenure—"Sufficient plea."*] The sticking up or publication in a conspicuous part of the Collector's *kutcheri* of a notice in accordance with the provisions of cl. 2 of s. 8 of Regulation VIII of 1819 is essential to the validity of a sale of a *patni* tenure under that Regulation. Where a notice of sale, instead of being stuck up and published in some conspicuous part of the Collector's *kutcheri* as required by law, was, in accordance with the practice which prevailed during the incumbency of the Nazir of the Collector's *kutcheri* at Birbhum and of his predecessors in office, kept by the Nazir with other petitions for sale and notices relating to them in a bundle, which was at night locked up for safe custody, and in the day time kept in a conspicuous place near his seat, at the entrance to the *kutcheri*, any person who chose to ask for it or wished to see it being at liberty to inspect the whole bundle:—*Held* [by PETHERAM, C. J. and GHOSE, J. (TOTTENHAM, J. dissenting)] that this was not a publication of the notice within the meaning of cl. 2 of s. 8 of the Regulation, and that it was a 'sufficient plea' for the defaulting *patnidars* within the meaning of s. 14 to have the sale set aside. *Maharaja of Burdwan* v. *Tarasundari Debi*, I. L. R. 9 Calc. 619; L. R. 10 I. A. 19, relied on *Ahsanulla Khan Bahadur* v. *Hurri Churn Mozoomdar*, I. L. R. 17 Calc. 474, distinguished. RAJNARAIN MITRA *v.* ANANTA LAL MONDUL; KRISTO LAL CHOWDHURI *v.* ANANTA LAL MONDUL.

[I. L. R. 19 Calc. 703

(*b*) OTHER GROUNDS.

—*Bengal Regulation* (*VIII of* 1819), *s.* 14—*Patni sale—Sepatni interest—Notice of sale—Onus of proof as to requirements of Regulation VIII of* 1819.] Certain *patnidars* having defaulted, their *patni* right was put up for sale by the zemindar under Bengal Regulation VIII of 1819, and purchased by the defendants. The plaintiffs being *sepatnidars* of a portion of the lands let out in *patni*, were, after the sale, dispossessed by the defendants. The *sepatnidars* brought a suit against the defendants asking for possession of the *mouzahs* forming their *sepatni*, alleging that the notification of sale had not been duly served, and that the proceedings taken by the zemindar were bad, as they were taken in the name of the last deceased holder of the *patni*. The zemindar was made a party to the suit, but no relief was asked against him:—*Held* that, notwithstanding that the plaint questioned the validity of the sale, the suit was not one under s. 14 of the Regulation, no relief being claimed against the zemindar, and that the plaintiffs' only remedy was a suit under s. 14 of the Regulation to set aside the sale of the entire *patni*. SURESH CHANDRA MUKHOPADHYA *v.* AKKORI SING.

[I. L. R. 20 Calc. 746

SALE FOR ARREARS OF REVENUE.

1. Incumbrances 984
2. Purchasers, Rights and Liabilities of 985
3. Setting aside Sale 986
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See BOMBAY LAND REVENUE ACT, S. 56.

[I. L. R. 15 Bom. 67

See CASES UNDER MADRAS REVENUE RECOVERY ACT.

See PUBLIC DEMANDS RECOVERY ACT, S. 10.

[I. L. R. 20 Calc. 325

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE.

[I. L. R. 13 All. 195

——, Suit to recover surplus sale-proceeds of—

See LIMITATION ACT, 1877, S. 10.

[I. L. R. 18 Calc. 234

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 20 Calc. 51

(1) INCUMBRANCES.

1.—*Act XI of* 1859, *ss.* 10, 11, 28, 53, 54, *and Sch. A—Rights of purchaser of share of estate admitted to special registration under ss.* 10, 11 *of Act—Rights of mortgagee of share against purchaser.*] There is a clear distinction between the rights acquired under ss. 53 and 54 of Act XI of 1859. Under the former section the terms of the certificate given under Sch. A are limited, and a purchaser under that section acquires the estate

SALE FOR ARREARS OF REVENUE—*continued.*

(1) INCUMBRANCES—*concluded.*

subject to all incumbrances *existing at the time of sale*, whether created before or after the default, and even up to the date of the sale; but there is no such limitation to the terms of a certificate given to a purchaser under s. 54, and all incumbrances created after the date on which a purchase under that section takes effect, that is, after the date on which the default was committed, are void. A share of a *taluk* admitted to special registration, under ss. 10 and 11 of Act XI of 1859, was advertised for sale under that Act in default of payment of the June *kist* of Government revenue. On the 25th July the recorded sharer mortgaged his interest in that share to the plaintiff. The sale took place on the 26th September, and the share was purchased by the defendant who obtained a sale certificate in due form under the Act declaring, in accordance with s. 28, that his title accrued from the 29th June, the day after the latest date allowed for payment of the June *kist*:—*Held*, that the mortgage was of no effect as an incumbrance under s. 54 of the Act. CHOWDHRY JOGESSUR MULLICK *v.* KHETTER MOHUN PAL.

[I. L. R. 17 Calc 148

(2) PURCHASERS, RIGHTS AND LIABILITIES OF.

2.—*Madras Revenue Recovery Act* (*Madras Act II of* 1864), *ss.* 1, 39, 42—*Rights of jenmi in Malabar — Grant by Government of waste land on a cowle.*] The Collector of Malabar in 1869 let defendant 2 into possession of certain waste land under a *cowle*, and in 1872 granted to him a *pottah* for it. The *cowledar* brought the land into cultivation, but subsequently left it uncultivated and failed to pay the assessed revenue; the land was, accordingly, attached in 1885 for arrears of revenue under the Madras Revenue Recovery Act, 1864, and sold to defendant 3. The plaintiff, who was the *jenmi* of the land had no notice of the grant of either the *cowle* or the *pottah*: he asserted his right to *jenmibhogam* in a petition presented to the Collector at the time of the sale, but the sale proceeded without reference to his claim. The present suit was brought to set aside the sale:—*Held*, the interest of the *jenmi* did not pass by the sale. SECRETARY OF STATE *v.* ASHTAMURTHI.

[I. L. R. 13 Mad. 89

3.—*Madras Revenue Recovery Act* (*II of* 1864), *ss.* 42, 44—*Sale of part of a holding for arrears of revenue due on another part.*] The plaintiff sued, as the purchaser under a Court-sale, for possession of certain land, which the defendant's vendor had purchased at a sale held under the Madras Revenue Recovery Act for arrears of revenue accrued due on other land belonging to the judgment-debtor:—*Held* that, under the sale for arrears of revenue, the land had passed to the defendant's vendor, and that the suit should be dismissed. SAMA *v.* STRINIVASA.

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SALE FOR ARREARS OF REVENUE—*continued.*

(2) PURCHASERS, RIGHTS AND LIABILITIES OF—*concluded.*

4.—*Madras Revenue Recovery Act* (*Madras Act II of* 1864), *s.* 42—*Incumbrance—Permanent lease at a low rent.*] One of the villages in a *mitta* was demised by the *mittadar* to *A* on a permanent lease, at a rate below both the *faisal* assessment and the proportion of revenue payable upon it. The lessee's interest was brought to sale in execution of a decree and purchased by *B*, and ultimately was sold in 1884 to the plaintiff, who now sued the tenant in possession to enforce an exchange of *pottah* and *muchalka*. In the interval, *viz.*, in 1883, the village was sold for arrears of revenue under Madras Act II of 1864 to *C*, and the defendant claimed to hold the land from *C*:—*Held*, that the permanent lease was an incumbrance under the Madras Revenue Recovery Act, 1864, s. 42, and was voidable by the purchaser at the revenue-sale, although it had not been declared to be invalid by the Collector. NARASIMMA *v.* SURIANARAYANA.

[I. L. R. 16 Mad. 144

5.—*Madras Regulation XXV of* 1802, *s.* 12—*Madras Revenue Recovery Act II of* 1864, *ss.* 32, 41.] The purchaser at a revenue-sale is *primâ facie* entitled to claim the *faisal* rate of rent. PALANI *v.* PARAMASIVA.

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6.—*Decree setting aside sale, effect of not executing, within six months — Sale, validity of—Right of auction-purchaser to bring suit for declaration of title and possession — Revenue Sale Law* (*Act XI of* 1859), *s.* 34.] Certain property having been sold for arrears of Government revenue, the defaulting tenant brought a suit in the Civil Court to have the sale set aside, and obtained a decree which he did not attempt to execute till after the expiry of six months from its date:—*Held*, in a suit brought by the auction-purchaser to recover possession of the share he had bought at the sale, that such non-execution of the decree had the effect of restoring the sale so far as it concerned the defaulter, and that the plaintiff was entitled to succeed. ABDUL LOTIF *v.* YOUSUFF ALI.

[I. L. R. 21 Calc. 255

(3) SETTING ASIDE SALE.

(*a*) IRREGULARITY.

7.—*Sale for arrears of road cess—Certificate of title—Certificate of unpaid demand—Collector of the district—Defects in service of notice and in proclamation of sale—Act XI of* 1859, *ss.* 27, 28—*Bengal Act* (*VII of* 1868), *ss.* 5, 8, 11—*Public Demands Recovery Act* (*Bengal Act VII of* 1880), *ss.* 2, 4, 7, 8, *cl.* (4), 10, 19—*Code of Civil Procedure* (*Act XIV of* 1882), *ss.* 289, 314.] A certificate of title under Act XI of 1859, s. 28, and Bengal Act VII of 1868, s. 11, issued before the expiry of the period of sixty days required by s. 27 of Act XI of 1859 from the date of sale, is not a certificate duly issued under the provisions of these Acts, and cannot cure defects in the service of notice or in

SALE FOR ARREARS OF REVENUE—*continued.*

(3) SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*concluded.*

the proclamation of sale. The certificate in execution of which the plaintiff's estate was sold was not made or signed by the Collector of the district, but by a Deputy Collector:—*Held*, that under s. 7 of the Public Demands Recovery Act (VII of 1880) a certificate under the Act must be made and filed by the Collector of the district, and not by any officer gazetted to perform the functions of a Collector under Act VII of 1880. MONINDRA NATH MOOKERJI *v.* SARASWATI DASI.

[I. L. R. 18 Calc. 125

8.—*Suit to set aside sale—Notice of sale, publication of—Act XI of* 1859, *ss. 5 and 7.*] Where it was contended that a sale under Act XI of 1859 was bad on the ground that the notices prescribed by ss. 5 and 7 of that Act were not published, *held*, that there being no subsisting attachment on the property at the time it was sold, omission to issue notice under s. 5 did not vitiate the sale:—*Held*, that, in the absence of proof that the plaintiff had sustained substantial injury on account of the omission to issue notice under s. 7, such omission did not invalidate the sale. MAHOMED AZHAR *v.* RAJ CHUNDER ROY.

[I. L. R. 21 Calc. 354

(*b*) OTHER GROUNDS.

9.—*Sale without attachment — Attachment of property sold, not necessary — Sale ultra vires — Act XI of* 1859, *ss.* 5, 17.] The right to set aside a sale for arrears of Government revenue under Act XI of 1859 is not confined to proprietors alone, but extends to all persons, such as mortgagees, having an interest in the property antecedent to its sale. *Watson* v. *Sreemunt Lal Khan*, 5 Moore's I. A. 447, relied on. There is nothing in s. 5 of Act XI of 1859 which indicates that property sold for arrears of Government revenue should be under attachment at the time of sale. A sale in contravention of ss. 5 and 17 of Act XI of 1859 is *ultra vires* and therefore void. The principle laid down by the Full Bench in the case of *Lala Mobaruk Lal* v. *Secretary of State for India in Council*, I. L. R. 11 Calc. 200, applied. GOBIND LAL ROY *v.* BIPRODAS ROY.

[I. L. R. 17 Calc. 398

10. — *Act XI of* 1859, *ss.* 18, 33 — *Collector's order of exemption.*] A Collector's order under s. 18 of Act XI of 1859 for exempting an estate from sale for arrears of revenue must be an absolute exemption, and not an order having effect as an exemption or not, according to what may happen, or be done, afterwards. It must not depend on an act which may, or may not, be performed. The High Court having set aside a sale, as contrary to the provisions of the Act XI of 1859, upon a ground other than that declared and specified in an appeal made to the Commissioner of Revenue against the order for the sale, the Judicial

SALE FOR ARREARS OF REVENUE—*concluded.*

(3) SETTING ASIDE SALE—*concluded.*

(*b*) OTHER GROUNDS—*concluded.*

Committee, referring to s. 33 as prohibiting such a course, reversed the decision of the High Court. LALA GAURI SANKER LAL *v.* JANKI PERSHAD.

[I. L. R. 17 Calc. 809
[L. R. 17 I. A. 57

11. — *Act XI of* 1859, *ss.* 17, 25, 33—*Bengal Act VII of* 1868—*Suit to set aside sale—Exemption from sale of land under attachment by Collector—Bengal Cess Act (Bengal Act IX of* 1880)—*Omission to specify ground of objection in revenue appeal.*] An estate sold for arrears of revenue had been previously brought to a judicial sale by a mortgagee, whose charge preceded that of a puisne incumbrancer, whom the present plaintiffs represented. It was not the consequence of the execution-sale that puisne incumbrancers, who were not parties to the prior mortgagee's suit, were displaced, or left with nothing but a claim against the surplus proceeds of the sale, if any; and, on the facts, the present plaintiffs had a mortgagee's interest in the estate sold by the Collector, entitling them to sue to have the sale for default in payment of revenue set aside, as contrary to Act XI of 1859. A sale for arrears of revenue, if for arrears which have accrued while the land has been subject to an order issued by the Collector under the Cess Act (Bengal Act IX of 1880), for the levy of road cess in arrear, is contrary to s. 17 of Act XI of 1859, such an order being an attachment within the meaning of that section. But under s. 33 of that Act, in every case where a sale for arrears of revenue is impeached, as being contrary to the provisions of Act XI of 1859, no grounds of objection are open to the plaintiff which have not been declared and specified in an appeal to the Commissioner under s. 25. The above provision in s. 33 applies where the sale has been irregularly conducted, and also where the sale has been illegal in consequence of an express provision for exemption of the land from sale for arrears having been contravened. *Lala Gauri Sanker Lal* v. *Janki Pershad*, I. L. R. 17 Calc. 809: L. R. 17 I. A. 57, referred to. GOBIND LAL ROY *v.* RAMJANAM MISSER.

[I. L. R. 21 Calc. 70
[L. R. 20 I. A. 165

12.—*Sunset law — Bengal Act VII of* 1868, *s.* 11—*Revenue Sale Law (Act XI of* 1859), *s.* 6.] Section 11 of Bengal Act VII of 1868 makes the sunset law as enacted in s. 6 of Act XI of 1859 applicable to sales of tenures under the former Act. The refusal therefore of the Collector to accept payment of the amount due when tendered after sunset on the latest day for payment does not make the sale under Bengal Act VII of 1868 illegal. AZIMUDDIN PATWARI *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 21 Calc. 360

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT VII OF 1880.

See PUBLIC DEMANDS RECOVERY ACT.

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[I. L. R. 21 Calc. 34

(1) STAY OF SALE.

1.—*Civil Procedure Code ss.* 276, 305.] Section 305 of the Civil Procedure Code (which enables the Court in certain cases to stay the sale of immoveable property to enable the debtor to raise the amount of the decree by mortgage, lease, or private sale of the property) contemplates a mortgage or lease or private sale only where "the amount of the decree" can be thus provided for. A Court executing a decree can neither grant a certificate under this section, nor confirm a mortgage or other alienation of property, unless it

SALE IN EXECUTION OF DECREE—*continued.*

(1) STAY OF SALE—*concluded.*

appears that by such alienation the decree will be satisfied in full. It is not sufficient that after grant of certificate, a mortgage by the judgment-debtor is, as between him and his mortgagee, *bonâ fide*, nor can it affect the lien acquired by the judgment-creditor under s. 276. GURUSAMI *v.* VENKATSAMI.

[I. L. R. 14 Mad. 277

(2) BIDDERS.

2—*Civil Procedure Code, s.* 290—*Withdrawal of bid.*] It is competent to a bidder at a Court auction-sale to withdraw his bid. AGRA BANK *v.* HAMLIN.

[I. L. R. 14 Mad. 235

(3) PURCHASERS, RIGHTS OF.

(*a*) GENERALLY.

3.—*Increase of judgment-debtor's interest occurring after attachment and before sale.*] Previously to a mortgage of it, a fractional interest in certain property (which interest was purchased by the plaintiff, the mortgagee at a judicial sale) had been the subject of a settlement by a Mahomedan on his wife under the conditions that if he should have no child by her, his two sons by another wife should each have an estate therein. He died without other children:—*Held*, that the two sons had taken definite interests capable of being attached within s. 266 of the Civil Procedure Code, not being mere expectancies. *Held*, that a judicial sale of property, purporting to be of all the interest of a judgment-debtor, carries with it any enlargement thereof that may have occurred after the attachment and before the sale; and that, accordingly, the above-mentioned settlor having died without a child by that wife, between the date of the attachment and the sale, the sons' augmented interests passed thereby. UMES CHUNDER SIRCAR *v.* ZAHUR FATIMA.

[I. L. R. 18 Calc. 164
[L. R. 17 I. A. 201

4.—*Description of property in specification under s.* 237 *of Civil Procedure Code on application for attachment—Execution against joint family property.*] The specification required by s. 237 of the Civil Procedure Code of the judgment-debtor's share or interest in immoveable property sought to be attached should state distinctly whether it was the judgment-debtor's undivided share, or the family property in which the judgment-debtor had an undivided share, which was sought to be attached, and should also specify what that family property was. If the specification merely referred to the judgment-debtor's share and interest in what was the family property, the Court would hold, unless something to the contrary appeared, that the sale was of that share and interest only. MUHAMMAD HUSAIN *v.* DIP CHAND.

[I. L. R. 14 All. 190

SALE IN EXECUTION OF DECREE—*continued.*

(3) PURCHASERS, RIGHTS OF—*concluded.*

(*a*) GENERALLY—*concluded.*

5.—*Civil Procedure Code (Act XIV of* 1882), *s.* 274, *cl.* (*c*)—*Rights of purchaser of mortgage-bond at sale in execution of decree.*] Where a person at an execution-sale purchases a mortgage-bond under which certain immoveable property is given as collateral security for an advance, the fact that he has not attached under s. 274 of the Code will not affect his right to have the collateral security enforced by the sale of the properties mortgaged. KASINATH DAS *v.* SADASIV PATNAIK.

[I. L. R. 20 Calc. 805

(*b*) EMBLEMENTS.

6.—*Crop standing on land sold in execution of a decree obtained by a mortgagee in possession.*] A mortgagee in possession sued on his mortgage, and having obtained a decree brought the land to sale in execution; and the execution-purchaser was placed in possession:—*Held*, the mortgagee was not entitled to recover from the execution-purchaser the value of the then standing crop. RAMALINGA *v.* SAMIAPPA

[I. L. R. 13 Mad. 15

(4) JOINT PROPERTY.

7.—*Hindu law—Joint family—Court-sale of right, title and interest of the father, effect of.*] One *R* and his sons were members of an undivided family. In execution of certain money-decrees passed against *R* the lands in dispute were sold to various persons, from whom they were afterwards bought by the defendant. In 1875 *R* died, and in 1887 his sons and grandson filed this suit against the defendant to recover the lands. They alleged that the lands were service *vatan* lands and inalienable, and that the execution-sales affected nothing except *R's* life-interest, and that, on *R's* death, they (the plaintiffs) became entitled. They also contended that, even if the Court should find the lands were not service *vatan* lands, they were, at all events, ancestral property, and that the plaintiffs' interests therein were not affected by execution-sales under decrees to which they were not parties:—*Held*, on the evidence, that although the sale-proclamation and sale-certificate spoke only of the right, title and interest of *R* as being offered for sale and purchased by the auction-purchasers, the entire family interest in the property was, as a fact, the subject of the auction-sales. The words "right, title and interest" of the judgment-debtor are ambiguous words, which may either mean the share which he would have obtained on partition, or the amount which he might have sold to satisfy his debt; and it is in each case a mixed question of law and fact to determine what the Court intended to sell and what the purchaser expected to buy. APPAJI BAPUJI *v.* KESHAV SHAMRAV. KESHAV SHAMRAV *v.* APPAJI BAPUJI.

[I. L. R. 15 Bom. 13

SALE IN EXECUTION OF DECREE—*continued.*

(5) RE-SALES.

8.—*Collector, power of, to set aside sale and to order a re-sale.*] A sale of certain property by the Collector in execution of a decree was set aside by the Collector on the application of the decree-holder, and a re-sale took place at which the decree-holder purchased the property for Rs. 650. The purchase-money was duly paid into Court. Subsequently a third party applied to the Collector to set aside this sale, and offered Rs. 800 for the property. The Collector made an order setting aside the sale and ordering a re-sale; the biddings at such re-sale to commence at Rs. 800. The re-sale accordingly took place. The decree-holder applied to the Subordinate Judge to set aside the re-sale and to confirm the previous sale to her. On reference to the High Court:—*Held*, that the re-sale by the Collector was a nullity, and that the question with regard to the confirmation of the previous sale should be dealt with by the Subordinate Judge as if the Collector had issued no orders on the subject. *Ganpatram Motiram* v. *Isakji Adamji*, I. L. R. 15 Bom. 322, followed. BAI AMTHI *v.* MADHAV MANOR.

[I. L. R. 15 Bom. 694

(6) PURCHASERS, TITLE OF.

(*a*) CERTIFICATES OF SALE.

9.—*Statement in certificate of sale—Evidence—Suit to enforce charge against purchaser.*] A statement in a sale-certificate, granted by a Court, that the purchase is subject to a charge, is not conclusive evidence against the purchaser, when it is sought to enforce the charge by suit. RAMACHANDRA JOISHI *v.* HAZI KASSIM.

[I. L. R. 16 Mad. 207

10.—*Purchasers at successive execution-sales—Title obtained by first purchaser—Certificate of sale obtained by second purchaser before certificate obtained by first purchaser—Priority—Civil Procedure Code (Act XIV of 1882), s. 316—Limitation—Confirmation of sale.*] On 27th February 1886, the plaintiff purchased certain land at a Court-sale held in execution of a decree. On the 10th March 1886, the same property was put up for sale in execution of another decree, and purchased by the defendant. The sale to the defendant was confirmed on 3rd July 1886, and the sale to the plaintiff not until the 21st July 1886. Certificates of sale were issued to both plaintiff and defendant on the same day, *viz.*, on the 22nd September 1886, and on the 14th February 1887, the defendant was put in possession. In 1889, the plaintiff brought this suit to recover possession. The defendant relied on s. 316 of the Civil Procedure Code. He contended that, as under that section the title of a purchaser at a Court-sale vests at the date of the confirmation of the sale to him, his (the defendant's) right was superior to that of the plaintiff, inasmuch as the sale to him was confirmed on the 3rd July 1886, while the sale to the plaintiff was not confirmed until afterwards, *viz.*, on the 21st July:—*Held*, that the plaintiff was entitled to recover. By his prior purchase he had acquired an equitable or inchoate title to the property which was subsequently perfected by the certificate of sale. Nothing, therefore, passed to the defendant under the second sale. The words "the title to the property sold" in s. 316 of the Code of Civil Procedure mean the full perfected title arising on the sale becoming absolute. It is that title which under the section does not vest in the purchaser until confirmation. That provision, however, need not necessarily be construed as destroying any lesser interest which arises by reason of general equitable principles. *Quære*—Whether the provision in s. 316 as to the date at which the title of the purchaser is to vest does not apply only as between the parties to the suit and persons claiming through or under them. *Per* JARDINE, J.:—The reference to parties and persons claiming under them would be surplusage if the Legislature had intended the addition to apply to third parties. DAGDU *v.* PANCHAMSING.

[I. L. R. 17 Bom. 375

(7) DISTRIBUTION OF SALE-PROCEEDS.

11.—*Civil Procedure Code (Act XIV of 1882), s. 295—"Whenever assets are realized," meaning of—Deposit of twenty-five per cent. of purchase-money—Assets.*] The words "whenever assets are realized" in s. 295 of the Code of Civil Procedure really mean "whenever assets are so realised as to be available for distribution among the decree-holders." The twenty-five per cent. of the purchase-money deposited at a sale in execution of a decree is not "assets" within the meaning of s. 295, but a mere deposit, and therefore not immediately available for payment to the decree-holder. *Vishvanath Maheshvar* v. *Virchand Panachand*, I. L. R. 6 Bom. 16, distinguished. *Jogendro Nath Sircar* v. *Gobind Chunder Addi*, I. L. R. 12 Calc. 252, distinguished and commented upon. HAFEZ MAHOMED ALI KHAN *v.* DAMODAR PRAMANICK.

[I. L. R. 18 Calc. 242

12.—*Civil Procedure Code, s. 295.—Decree in Small Cause suit and decree in regular suit in Subordinate Judge's Court.*] Two decrees were passed against the same defendant in the Court of a district Munsif, and on the Small Cause side of a Subordinate Judge's Court in the same district respectively. The holder of the decree in the Small Cause suit attached and brought to sale the judgment-debtor's interest in a benefit fund. The other decree-holder applied for rateable distribution, his decree having been transferred for execution to the Subordinate Judge's Court directly, and not through the District Court:—*Held*, that the order for rateable distribution was right. KELU *v.* VIKRISHA.

[I. L. R. 15 Mad. 345

SALE IN EXECUTION OF DECREE—*continued.*

(7) DISTRIBUION OF SALE-PROCEEDS—*continued.*

13.—*Civil Procedure Code, s.* 295 — *Effect of vesting order in insolvency.*] A debtor against whom several decrees had been passed, filed his petition in the Insolvent Court at Madras, and the usual vesting order was made. One of the decree-holders had already attached property of the insolvent, and had obtained an order for sale in a District Court, and another decree-holder now applied to the same Court in execution of his decrees, for the attachment of other property and for rateable distribution of the proceeds of sale to be held in execution of the attachment already made. The District Judge held that the vesting order was a bar to both these applications:—*Held,* that the order rejecting the application for rateable distribution was wrong, and that the High Court had power to set it aside on revision under s. 622 of the Civil Procedure Code. VIRARAGHAVA *v.* PARASURAMA.

[I. L. R. 15 Mad. 372

14.—*Civil Procedure Code,* 1882, *ss.* 295, 276—*Attachment before judgment of fund in hands of third party—Decree afterwards obtained—Assignment by judgment-debtor of fund subsequently to the attachment — Creditors attaching the fund subsequent to the assignment—Fund by consent paid over to Sheriff by third party—Relative claims of assignee of fund, and subsequently attaching creditors—Assets realised by sale or otherwise in execution — Misdescription, in order of attachment, of property atttached.*] On the 8th July 1890, the plaintiff brought a suit (382 of 1890) against *G* for Rs. 2,237, and on 18th July obtained an attachment before judgment of certain money belonging to *G*, in the hands of the B. B. and C. I. Railway Company. On the 5th August 1890, *W* got a decree in the suit for Rs. 2,008, with interest and costs, and on the 13th August 1890, applied for execution. On the 24th September 1890, *G* made an assignment in favour of his attorneys, Messrs. Wadia and Ghandy, of the fund belonging to him (expressed to be Rs. 7,818) in the hands of the Railway Company, subject to the attachment levied on the same by *W*. This assignment was intended to secure costs incurred by Messrs. Wadia and Ghandy as attorneys for the defendant. Notice of this assignment was at once given to the Railway Company. In February 1891, the Bank of Bengal attached the sum of Rs. 7,818 in the hands of the Railway Company, in execution of a decree obtained by the Bank against *G* in suit 190 of 1890, and subsequently other creditors of *G*, who had obtained judgment against him, applied for execution and obtained attachments on the sum in question. On the 26th May 1891, under a consent order in suit 382 of 1890, the Railway Company paid over to the Sheriff of Bombay the sum of Rs. 8,084-1-0, which was the amount admitted by the Company to be due to *G*, after making all just deductions. It was contended by Messrs. Wadia and Ghandy that, under the above assignment, they were entitled to the fund assigned to them, subject only to the claim of the plaintiff, who had, at the date of assignment, already attached the said fund, and that subsequent attaching creditors had no claim to the said fund:—*Held,* that the fund in question must be regarded as "assets realized by sale, or otherwise, in execution of a decree," within the meaning of s. 295 of the Civil Procedure Code. *Held* also that, under the provision of s. 295 the claims of the subsequent execution-creditors were "claims enforceable under the attachment of the plaintiff, within the meaning of s. 276 of the Civil Procedure Code," and that the assignment to Messrs. Wadia and Ghandy was void, as well against the claims of the creditors of *G*, who applied for execution before the 26th May 1891, as against those of the plaintiff to the funds in the hands of the Sheriff of Bombay. *Held* further, that the attachment was not limited merely to such portion of the fund as covered the amount of the decree, but was a valid attachment in the form in which it was made, namely, on the whole fund in the hands of the Railway Company. It was argued that the attachment was actually made only on Rs. 6,000, and that it did not therefore include the whole fund, which was of larger amount. *Held,* that the misdescription in the order of attachment was a mere *falsa demonstratio,* and that the entire sum in the hands of the Railway Company was attached. The description of the property must be reasonably accurate, under the circumstances, and such as with reasonable certainty identifies the property. If it is such it ought to be held sufficient. SORABJI EDULJI WARDEN *v.* GOVIND RAMJI.

[I. L. R. 16 Bom. 91

15.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 295—*Rateable distribution of sale-proceeds—Same judgment-debtors—Separate and joint-judgment-debtors—Marshalling of assets between decree-holders — Decree of Small Cause Court, Transfer of.*] The plaintiffs in this suit obtained a decree against all three defendants *A*, *B* and *C*. In execution of such decree they attached two sets of securities; (i) municipal bonds, the joint property of *B* and *C*; and (ii) Government loan notes, the property of *C* alone. These were sold by the Sheriff, but before they were so sold the holders of decrees in two other High Court suits came in and applied to the High Court for execution of their decrees, which decrees were against *C* alone. These last-mentioned decree-holders now claimed to participate rateably with the plaintiffs in this suit in the realized proceeds of both the above-mentioned securities. The plaintiffs in this suit contended that such decree-holders, having decrees only against *C*, were not claiming against "the same judgment-debtors" as themselves within the meaning of s. 295 o the Civil Procedure Code:—*Held,* that as regard

SALE IN EXECUTION OF DECREE—*continued.*

(7) DISTRIBUTION OF SALE-PROCEEDS—*concluded.*

the proceeds of the Government loan notes, the sole property of *C*, the plaintiffs' decree and the other two decrees were all decrees "against the same judgment-debtor," and that, therefore, as regards that fund, all three sets of decree-holders were equally entitled and must share therein rateably. *Held* further that, as regards the other fund, the proceeds of the property of *B* and *C*, only the plaintiffs in this suit were entitled thereto, since the other decree-holders had no decrees against *B* and *C*, and therefore not "against the same judgment-debtors" as was the decree of the plaintiffs *Held* further, that the plaintiffs having two funds to proceed against, whilst the other decree-holders had but one of these two, the equitable principle of marshalling should be applied, and the plaintiffs required to satisfy themselves as far as possible out of the fund not available to the other decree-holdere, before they had recourse to the other fund common to all, and as regards the latter fund the plaintiffs should claim against the same only as creditors for the then unsatisfied balance of their debt rateably with such other decree-holders. *Shumbhu Nath Poddar* v. *Luckynath Dey*, I. L R. 9 Calc. 920, and *Deboki Nundun Sen* v. *Hart*, I. L. R. 12 Calc. 294, considered and followed. Another holder of a decree—a Small Cause Court decree passed against all three debtors *A*, *B* and *C*—had previously to the said attachments by the Sheriff in this suit himself attached the same securities through the Small Cause Court. He did not, however, at any time get his decree transferred to the High Court He now came in in these execution-proceedings and claimed to share rateably in both funds on the same footing as the plaintiffs in this suit. *Held* that, not having had his Small Cause Court decree transferred to the High Court before the realization of the said securities, or indeed at any time, he was not entitled to share in either fund. *Muttalgiri* v. *Muttayyar*, I. L. R. 6 Mad. 357, followed. NIMBAJI TULSIRAM v. VADIA VENKATI.

[I. L. R. 16 Bom. 683

16.—*Civil Procedure Code*, 1882, *ss.* 285, 295—*Attachment by Small Cause Court—Transfer of decree to superior Court.*] Practice of the Calcutta High Court in favour of the principle of rateable distribution amongst all the attaching creditors, without any such condition as the transfer of the execution-proceedings to the superior Court, adopted and held supported by the cases of *Gopee Nath Acharje* v. *Achcha Bibee*, I. L. R. 7 Calc. 553; *Bykant Nath Shaha* v. *Rajendro Narain Rai*, I. L. R. 12 Calc. 333; and *Bhugwan Dass Bogla* v. *Bunko Behary Bajpie*, suit 130 of 1884, unreported. *Muttalagiri Nayak* v. *Muttayyar*, I. L. R. 6 Mad. 357, and *Nimbaji Tulsiram* v. *Vadia Venkati*, I. L. R. 16 Bom. 683, not followed. CLARK *v.* ALEXANDER.

[I. L. R. 21 Calc. 200

SALE IN EXECUTION OF DECREE—*continued.*

(8) INVALID SALES.

(*a*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

17.—*Death of judgment-debtor after attachment but before sale in execution—Subsequent sale without legal representative of judgment-debtor being made a party—Effect of such omission on validity of sale—Civil Procedure Code, ss.* 234, 311.] Section 234 of the Civil Procedure Code applies only to cases where, after the death of the judgment-debtor, the decree-holder seeks to bring to sale property which was of the judgment-debtor in his lifetime, and which was not at the time of his death under attachment at the suit of the decree-holder. It does not apply to cases where the judgment-debtor dies after attachment but before sale. An attachment would not abate on the death of the judgment-debtor, and his death would not render it necessary for the decree-holder to take any steps to keep in force an attachment of property made in the judgment-debtor's lifetime. Property under attachment must be considered as in the custody of the law. There is no provision in the Civil Procedure Code requiring notice to be given personally to a judgment-debtor or his legal representative of a sale of property under attachment. If the legal representative is damnified by the sale, his remedy is by application under s. 311 of the Code So *held* by the Full Bench, (MAHMOOD, J., dissenting.) Where, subsequently to the attachment of immoveable property in execution of a simple money-decree, the judgment-debtor died, and the property was then sold, without making the legal representatives of the judgment-debtor parties to the sale-proceedings:—*Held*, by the Full Bench (MAHMOOD, J., dissenting), that the sale was regular and valid notwithstanding such omission. *Ramasami Ayyangar* v. *Bagirathiammal*, I. L. R. 6 Mad. 180, dissented from:—*Held* by MAHMOOD, J., that on the principle of *audi alteram partem*, and because the rules provided by the Civil Procedure Code for suits should, under s. 647, be applied to execution-proceedings (those proceedings including and terminating in the sale), the omission to make the legal representatives of the judgment-debtor parties to the sale-proceedings was an irregularity; but that such irregularity would not invalidate the sale without proof of substantial injury within the meaning of s. 311; and that, as in the present case, no such substantial injury was either alleged or proved, the sale was valid. SHEO PRASAD *v.* HIRA LAL.

[I. L. R. 12 All. 440

(*b*) DECREE WITHOUT POWER OF SALE.

18.—*Sale under decree giving no power of sale—Partition of tarwad—Tarwad debt—Construction of decree—Decree explained by judgment.*] In 1870 the managers of the plaintiff's *tarwad* demised certain land now in suit on *kanom*. In 1885 they sued to redeem the *kanom*, and a decree was passed that the plaintiff do pay a certain sum to the *kanomdar*, and that he do surrender the land; but in the judgment it was said that the *kanom* amount should be charged on the land. In 1886 the *tarwad*

SALE IN EXECUTION OF DECREE—*continued.*

(8) INVALID SALES—*continued.*

(*b*) DECREE WITHOUT POWER OF SALE—*concld.*

was divided, and the land above referred to was allotted to the present plaintiff's branch. In 1887 the *kanomdar*, in execution of the above decree, brought the land to sale, and it was purchased by defendant 1:—*Held*, that the sale was not binding on the plaintiff. SANKARA *v.* KELU.

[I. L. R. 14 Mad. 29

(*c*) DECREE AMENDED AFTER EXECUTION.

19.—*Civil Procedure Code* (*Act XIV of* 1882), s. 206—*Amendment of decree after execution.*] In a suit for money against the *karnavan* and two *anandravans* of a Malabar *tarwad*, the judgment directed a "decree for the plaintiff as prayed," but the decree ordered payment by one *anandravan* only. Land belonging to the *tarwad* was attached and sold in execution, an objection by the other members of the *tarwad* having been overruled. After the sale, the decree was amended and brought into conformity with the judgment. In a suit brought by other members of the *tarwad* against the *karnavan*, the decree-holder and the execution-purchaser, it was found that the judgment-debt had been contracted for proper *tarwad* purposes, and that the land had been sold for its proper value:—*Held*, that the sale was binding on the plaintiffs. PYDEL *v.* CHATHAPPAN.

[I. L. R. 14 Mad. 150

See CHATHAPPAN *v.* PYDEL.

[I. L. R. 15 Mad. 403

(*d*) WANT OF JURISDICTION.

20.—*Property outside jurisdiction of Court executing decree—Code of Civil Procedure* (*Act XIV of* 1882), *ss.* 16, 223, 649.] A Court has no jurisdiction, in execution of a decree, to sell property over which it has no territorial jurisdiction at the time it passed the order of sale. The decree-holder at a sale under a mortgage-decree purchased the mortgaged property with leave of the Court. Before the order of sale was passed, the mortgaged property had been transferred by an order of Government to the jurisdiction of another Court:—*Held*, by the Full Bench, that the sale must be set aside as being without jurisdiction. *Komini Soondari Chowdhrani* v. *Kali Prosonno Ghose*, L. R. 12 I. A. 215: I. L. R. 12 Calc. 225, followed. PREM CHAND DEY *v.* MOKHODA DEBI.

[I. L. R. 17 Calc. 699

See DAKHINA CHURN CHATTOPADHYA *v.* BILASH CHUNDER ROY.

[I. L. R 18 Calc. 526

21.—*Attachment of immoveable property in execution of decrees of two Courts of same grade—Sale by one Court pending prior attachment by other Court—Validity of sale—Title of purchaser—Civil Procedure Code* (*Act XIV of* 1882), *s.* 285.] *X* on the 3rd November 1884 obtained a decree in

SALE IN EXECUTION OF DECREE—*continued.*

(8) INVALID SALES—*concluded.*

(*d*) WANT OF JURISDICTION—*concluded.*

the Court of the Second Munsif of Bagirhat against *A*, and on the 6th August 1887 sold such decree to the plaintiff, who on the 8th August 1887 applied in that Court for execution, and on the 5th September 1887 attached the share of *A* in a certain *jama*. The share was subsequently sold in execution of the plaintiff's decree on the 20th October 1887 and purchased by the plaintiff himself. *Y* having obtained another decree against *A* in the Court of the First Munsif of Bagirhat on the 6th May 1875, sold his decree in the month of January or February 1887 to the defendant, who on the 10th February 1887 commenced execution-proceedings in the First Munsif's Court against *A*, and on the 16th July applied for attachment of *A's* share in the *jama*. *A* filed an objection which was disallowed, and the share was attached at the defendant's instance on the 28th July 1887, and the attachment was confirmed on appeal on the 26th November 1887. The plaintiff, on the strength of his purchase of the 20th October 1887, put in a claim in the month of April 1888 in the defendant's execution-proceedings in the Court of the First Munsif, which was, however, disallowed. He then filed a suit to set aside the order disallowing his claim, and for a declaration that the right, title and interest of *A* passed to him under the sale of the 20th October 1887:—*Held* that, though the property had been first attached in the Court of the First Munsif, that Court was not a Court of a higher grade than that of the Second Munsif within the meaning of s. 285 of the Code of Civil Procedure, and that the sale to the plaintiff was valid, and that he was entitled to the decree he prayed for. *Bykant Nath Shaha* v. *Rajendro Narain Rai*, I. L. R. 12 All. 339, followed; *Badri Prasad* v. *Saran Lal*, I. L. R. 4 All. 359; *Aghore Nath* v. *Shama Sundari*, I. L. R. 5 All. 615, dissented from, and *Muttukaruppan Chetti* v. *Mutturamalinga Chetti*, I. L. R. 7 Mad. 47, referred to. DWARKA NATH DASS *v.* BANKU BEHARI BOSE.

[I. L. R. 19 Calc. 651

22.—*Sale of property for purpose of realizing Court-fees erroneously supposed to be due to Government—Ultra vires—Want of jurisdiction.*] An order for sale and a sale under such order are *ultra vires* and nullities when in fact there was no jurisdiction in the Court to make the order. *Ram Lall Moitra* v. *Bama Sundari Dabia*, I. L. R. 12 Calc. 307, referred to. BALWANT RAO *v.* MUHAMMAD HUSAIN

[I. L. R. 15 All. 324

(9) SETTING ASIDE SALE.

(*a*) IRREGULARITY.

23.—*Person claiming by title paramount to, or independently of, judgment-debtor—Civil Procedure Code, s* 311.] *Held* by MAHMOOD, J., that a person claiming by title paramount to, or independent of, the judgment-debtor is within the meaning of s. 311 of the Code, *Asmutun-nissa*

SALE IN EXECUTION OF DECREE— *continued.*

(9) SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

Begum v. *Ashruff Ali*, I. L. R. 15 Calc. 488, dissented from. *Abdul Huq Mozoomdar* v. *Mohini Mohun Shaha*, I. L. R. 14 Calc. 240, followed. SHEO PRASAD *v.* HIRA LAL.

[I. L. R. 12 All. 440

24.—*Civil Procedure Code, s.* 311—*Application to set aside execution-sale—Remedy of one claiming adversely to the judgment-debtor.*] A person alleging himself to be the undivided brother and, as such, the legal representative of a deceased judgment-debtor applied to have set aside a sale of certain property alleged by him to be joint family property, which had taken place in execu ion of the decree:—*Held*, that the proper remedy of the applicant was a regular suit and not a proceeding under Civil Procedure Code, s. 311. SUBBARAYADU *v.* PEDDA SUBBARAZU.

[I. L. R. 16 Mad. 476

25.—*Civil Procedure Code, ss.* 311, 295—"*Decree-holder.*"] The term "decree-holder" in s. 311 of the Code of Civil Procedure is not limited to the decree-holder who instituted the execution-proceedings, but may include a decree-holder who is entitled to come in and share in the proceeds under s. 295 of the Code. *Lakshmi* v. *Kuttunni*, I. L. R. 10 Mad. 57, approved. AJUDHIA PRASAD *v.* NAND LAL SINGH.

[I. L. R. 15 All. 318

26—*Civil Procedure Code*, s. 311—*Application to set aside sale in execution—Decree-holder—Parties.*] The decree-holder is a necessary party to an application under s, 311 of the Code of Civil Procedure. Hence where a judgment-debtor applied under the above-mentioned section to have a sale in execution of a decree against him set aside and made no attempt to implead the decree-holder until long after limitation had expired:—*Held*, that the application must be dismissed. *Karamat Khan* v. *Mir Ali Ahmed*, Weekly Notes, 1891, p. 121, referred to. ALI GAUHAR KHAN v. BANSIDHAR.

[I. L. R. 15 All. 407

27.—*Civil Procedure Code (Act XIV of* 1882), *ss.* 311, 312, 313, 622—*Application by auction-purchaser to set aside sale on ground of his having been deceived as to extent of estate sold—Remedy of auction-purchaser — Superintendence of High Court.*] A purchaser at a Court-sale, alleging that he had been misled by a misrepresentation as to the extent of the estate which he had believed to be put up for sale, obtained, on his petition before confirmation, a summary order setting asi le the sale:—*Held*, that the High Court had rightly cancelled this order, exercising its authority under s. 622 of the Code of Civil Procedure; that the purchaser, though he would have his remedy, on his taking the appropriate one, if he had been induced by fraud to pay a larger price than he otherwise would have have offered, had no right

SASE IN EXECUTION OF DECREE— *continued.*

(9) SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

to apply under either s. 311 or 313 of the Code of Civil Procedure (as they provided only for the particular cases to which they referred); and that s. 312, in the absence of cases falling within those sections, required that the sale should be confirmed. BIRJ MOHUN THAKUR *v.* RAI UMA NATH CHOWDHRY.

[I. L. R. 20 Calc. 8

[L. R. 19 I. A. 154

28.—*Civil Procedure Code, s.* 311—*Objection to sale by person claiming to be the real owner—Benamidar. decree against.*] *Per* PETHERAM, C.J., and GHOSE, J. (BEVERLEY, J., dissenting), where immoveable property has been sold in execution of a decree against the ostensible owner as his property, a person claiming to be the beneficial owner is entitled to come in under s. 311 of the Code of Civil Procedure and object to the sale. *Asmutunnissa Begum* v. *Ashruff Ali*, I L R. 15 Calc 488, followed. ABDUL GANI *v.* DUNNE.

[I. L. R. 20 Calc. 418

29.—*Civil Procedure Code, ss.* 295, 311—*Rateable distribution of sale-proceeds* — "*Decree-holder.*"] A person who is not entitled to come in under s. 295 of the Civil Procedure Code and share in the distribution of the sale-proceeds, is not included within the term "decree-holder" in s. 311, nor is he entitled to apply under that section to set aside the sale. *Deboki Nundun Sen* v. *Hart*, I. L. R. 12 Calc. 294, and *Lakshmi* v. *Kuttunni*, I. L. R. 10 Mad. 57, referred to. CHATTRAPAT SINGH *v.* JADUKUL PROSAD MUKERJEE.

[I. L. R. 20 Calc. 673

30.—*Effect on sale when confirmed, of the absence of attachment.*] After a sale has been confirmed and a sale-certificate granted to the purchaser, the sale is not to be considered as a nullity, merely by reason of the absence of any attachment. *Sharoda Moyee Burmonee* v. *Wooma Moyee Burmonee*, 8 W. R. 9, followed; *Mohadeo Dubey* v. *Bhola Nath Dichit*, I. L. R. 5 All. 86, dissented from. KISHORY MOHUN ROY *v.* MAHAMED MUJAFFAR HOSSEIN.

[I. L. R. 18 Calc. 188

31.—*Omission to attach property second time—Sale without attachment.*] Property already under attachment at the suit of the creditor to enforce part of a debt accrued due in a mortgage transaction at an earlier period, was sold in satisfaction of his decree for instalments subsequently due by the same debtor. A second attachment would have been a mere formality, and was not material to the validity of the sale. DOSIBAI *v.* ISHVARDAS JAGJIVANDAS.

[I. L. R. 15 Bom. 222

[L. R. 18 I. A. 22

SALE IN EXECUTION OF DECREE—*continued.*

(9) SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*continued.*

32.—*Proclamation of sale — Civil Procedure Code (Act XIV of 1882), ss. 289, 311—Substantial injury.*] A sale of revenue-paying land is not *ipso facto* void by reason of a copy of the sale proclamation not having been fixed up in the Collector's office as required by s. 289 of the Code of Civil Procedure. An omission so to fix up such notice is an irregularity, the remedy for which can only be by an application under s. 311. NANA KUMAR ROY *v.* GOLAM CHUNDER DEY.

[I. L. R. 18 Calc. 422

33.—*Civil Procedure Code, s. 306—Delay in making deposit—Adjournment of sale—Absence of substantial injury.*] The commencement of a Court-sale prior to the expiry of the thirtieth day, or any delay in making the deposit required by s. 306, or the adjournment of the sale from time to time without sufficient ground, is not more than a mere irregularity and does not vitiate the sale. VENKATA *v.* SAMA.

[I. L. R. 14 Mad. 227

34.—*Civil Procedure Code, 1882, ss. 290, 311 — Material irregularity — Proof of substantial injury.*] The non-compliance with the requirement of s. 290 of the Civil Procedure Code that before sales of immoveables in execution of decree thirty days should intervene between proclamation and sale, is a material irregularity within the meaning of s. 311. But its effect is not to make the sale a nullity without proof of substantial injury thereby to the judgment-debtor. As to this the latter section requires affirmative evidence. TASADDUK RASUL KHAN *v.* AHMAD HUSAIN.

[I. L. R. 21 Calc. 66

[L. R. 20 I. A. 176

35.—*Civil Procedure Code (Act XIV of 1882), s. 291—Omission by consent to issue fresh production of sale after adjournment.*] Where a sale in execution of decree was adjourned on the application of one of two judgment-debtors, who waived the issue of a fresh proclamation of sale, and the interests of both were sold :—*Held*, on the application of the other judgment-debtor to set aside the sale, that the omission to issue a fresh proclamation of sale under s. 291 of the Civil Procedure Code amounted only to an irregularity, and did not vitiate the sale. *Rameshur Singh* v. *Sheodin Singh*, I. L. R. 12 All. 510, and *Satish Chunder Rai Chowdhuri* v. *Thomas*, I. L. R. 11 Calc. 658, followed in principle. BAGAL CHUNDER MOOKERJEE *v.* RAMESHUR MUNDUL.

[I. L. R. 18 Calc. 496

36.—*Civil Procedure Code (Act X of 1877), s. 294, amended by Act XII of 1879—Purchase at a Court-sale on behalf of a judgment-creditor without permission of the Court.*] Under the Civil Procedure Code of 1877, as amended by Act XII of 1879, a purchase made at a Court-sale on behalf of a judgment-creditor was not invalid for want of permission of the Court. That is also the law under Act XIV of 1882 ; but such a purchase may be set aside by the Court on application under s. 294 as being irregular. PARAMASIVA *v.* KRISHNA.

[I. L. R. 14 Mad. 498

37.—*Sale held after postponement by Court—Order for postponement not reaching the conducting officer — Material irregularity in conducting sale—Civil Procedure Code, s. 311.*] The Court executing a decree passed an order postponing a sale in execution, but the order failed to reach the officer conducting the sale, and the sale was consequently held. The judgment-debtor applied to have the sale set aside as void :—*Held*, that the effect of the Court's order for postponement of the sale was to deprive the officer of all legal authority to hold it on the date previously fixed ; that his not being aware of the order was not material ; that the defect in the sale amounted to an illegality and not merely to an irregularity within the meaning of s. 311 of the Civil Procedure Code ; that consequently it was not necessary to show that the defect had caused substantial loss to the judgment-debtor ; and that the Court could not confirm the illegal sale, but must hold it to be void. *Sukhdeo Rai* v. *Sheo Ghulam*, I. L. R. 4 All. 382 ; *Ram Dial* v. *Mahtab Singh*, I. L. R. 3 All. 701 ; and *Ganga Prasad* v. *Jag Lal Rai*, I. L. R. 11 All. 333, referred to. SANT LAL *v.* UMRAO-UN-NISSA.

[I. L. R. 12 All. 96

38.—*Disparaging remarks by bystanders or purchasers other than the decree-holder—Notice of sale — Practice regarding sales in execution of decrees — Adjournment of sale — Civil Procedure Code (Act XIV of 1882), ss. 311, 291.*] Disparaging remarks made by bystanders or by purchasers at an execution-sale other than the decree-holder do not constitute such an irregularity as is contemplated by s. 311 of the Code of Civil Procedure. *Gunga Narain Gupta* v. *Annunda Moyee Burroanee*, 12 C. L. R. 404, followed ; *Woopendro Nath Sircar* v. *Brojendro Nath Mundle*, I. L. R. 7 Calc. 346 : 90 L. R. 263 ; and *Rukhinee Bullubh* v. *Brojonath Sircar*, I. L. R. 5 Calc. 308, distinguished. It is the practice of the Courts under the Rules of the High Court, which have the force of law, to place all properties intended for sale in execution of decrees on a list, and to proceed with the sales from day to day, commencing on an appointed day. As each property is taken up in its turn, an adjournment of the sale of a particular property, which is the consequence of such procedure, is not an adjournment within the meaning of s. 291 of the Civil Procedure Code ; and it cannot be said in such a case that there was an irregularity in the sale not having been held on the appointed day. LAL MOHUN CHOWDHURI *v.* NUNU MOHAMED TALUKDAR.

[I. L. R. 17 Calc. 152

SALE IN EXECUTION OF DECREE—*continued.*

(9) SETTING ASIDE SALE—*continued.*

(*a*) IRREGULARITY—*concluded.*

39.—*Inadequacy of price—Substantial injury—Civil Procedure Code (Act XIV of 1882), s. 311.*] The relative cause and effect between a proved material irregularity and inadequacy of price may either be established by direct evidence or be inferred, where such inference is reasonable, from the nature of the irregularity and the extent of the inadequacy of price. Where, upon an application to set aside a sale in execution of a decree, the material irregularity in the publication and conduct of the sale complained of, was the notifying of an incumbrance which did not really exist, and which must, in the ordinary course of things, lower the value of the property:—*Held*, that it might fairly be inferred that the irregularity in the conduct of the sale was the cause of the inadequacy of the price. *Macnaghten* v. *Mahabir Pershad Singh*, I. L. R. 9 Calc. 656, and *Lala Mobaruk Lal* v. *Secretary of State for India in Council*, I. L. R. 11 Calc. 200, referred to. GUR BUKSH LALL *v.* JAWAHIR SINGH.

[I. L. R. 20 Calc. 599

(*b*) RIGHTS OF PURCHASERS.

40.—*Civil Procedure Code, ss. 295, 315—Execution of decree—Suit by purchaser for return of purchase-money.*] Where an auction-purchaser seeks to have refunded the price paid by him for property sold in execution of a decree, on the ground that at the time of sale the judgment-debtor had no saleable interest therein, it is competent to him to proceed by way of a regular suit against the person into whose hands such price has come as such person's rateable share of the assets of the judgment-debtor, under s. 295 of the Code of Civil Procedure. He is not limited to the procedure in the execution-department mentioned in s. 315 of the said Code. *Munna Singh* v. *Gajadhar Singh*, I. L. R. 5 All. 577, followed. KISHUN LAL *v.* MUHAMMAD SAFDAR ALI KHAN.

[I. L. R. 13 All. 383

41.—*Suit by the purchaser in execution-sale to recover the purchase-money—Civil Procedure Code (Act XIV of 1882), s. 315—Want of saleable interest.*] The plaintiff purchased land sold in execution of a decree in favour of the defendant, but was subsequently evicted by the son of the judgment-debtor. He then sued in 1889 to recover the purchase-money paid by him, on the ground that the judgment-debtor possessed no saleable interest in the property in question. It appeared that the son of the judgment-debtor had obtained a decree in 1888 against the plaintiff and others declaring that she, the judgment-debtor, had no saleable interest in the property, and that in that suit the present defendant had given evidence in support of the present plaintiff's contention; the judgment in that suit was now admitted in evidence against the defendant:—*Held*, that the judgment above referred to was not evidence against the defendant; that the suit should be dismissed on the ground that there was no legal evidence, that the judgment-debtor whose interest in the land had been purchased by the plaintiff possessed no legal interest therein. NILAKANTA *v.* IMAMSAHIB.

[I. L. R. 16 Mad. 361

SALE IN EXECUTION OF DECREE—*concluded.*

(9) SETTING ASIDE SALE—*concluded.*

(*b*) RIGHTS OF PURCHASERS—*concluded.*

SALE OF GOODS.

See CONTRACT — CONSTRUCTION OF CONTRACTS.

[I. L. R. 15 Bom. 338

See LIEN.

[I. L. R. 18 Calc. 573

See PRINCIPAL AND AGENT—COMMISSION AGENTS.

[I. L. R. 16 Mad. 238

[I. L. R. 17 Bom. 520

———, Agreement for—

See STAMP ACT, 1879, SCH. I, ART. 46.

[I. L. R. 14 Bom. 102

See STAMP ACT, 1879, SCH. II, ART. 2.

[I. L. R. 15 Mad. 150

———, Note on memorandum of—

See STAMP ACT, 1879, SCH. I, ART. 46.

[I. L. R. 14 Bom. 102

—*Appropriation to vendee—Passing of property to vendee—Bankruptcy of agents for purchase—Unpaid vendor—Stoppage in transit—Termination of transit—Goods landed in Dock and held by Dock authorities — Bombay Act VI of 1879, ss. 43, 62—Port Trustees of Bombay—Bye-laws of Port Trust, Rule 59.*] In August 1890, the plaintiffs, through *B, A & Co.*, of Bombay, ordered from *B, R & Co.*, in London, 100 bales of grey shirtings at 7*s.* 10*d.* per piece f. o. b., November-December shipment. In order to carry out this order, *B, R & Co.* purchased goods of the required description from *D & Co.*, of Manchester. The heading of the invoice of the goods supplied by *D & Co.* contained these words: "Proceeds to be remitted to *B, R & Co.*, London, specifically for the protection of their acceptances of *G & R D's* draft against this or any of these shipments," and the letter addressed by *D & Co.* to *B, R & Co.*, forwarding draft contained the following clause:—"It is understood that the proceeds of the goods are to be remitted to be held by you specifically for the protection of the enclosed bill, or any other of your acceptances of our drafts against such shipments, which please confirm." To this letter *B, R & Co.* replied: "We confirm the arrangements between us as to the disposal of remittances and against the shipments." The bales were duly marked with the plaintiffs' mark by direction of *B, R & Co.*, and were to be delivered f.o.b. at Liverpool. *D & Co.* accordingly despatched the 100 bales to Liverpool, and there *B, R & Co.*

SALE OF GOODS—*continued.*

had them shipped in eight different vessels, *viz.*, 13 bales in each of the four steamers *Nubia*, *Clan Drummond*, *Inchulva* and *Roumania*, and 12 bales in each of the ships *Hispania*, *Eden Hall*, *City of Edinburgh* and *Wistow Hall*. The 100 bales were consigned to Bombay by *B, R & Co.*, in their own name, the bills of lading being made out to "their order or to his or their assigns." *B, R & Co.* paid the freight at Liverpool and effected insurance on the plaintiffs' behalf. All the shipments were made before the 1st December 1890, except the 12 bales by the *Wistow Hall*, which were shipped on that day. On the several shipments being effected, *B, R & Co.* accepted bills of *D & Co.* payable three months after date. The bills of lading of the bales shipped in the *Nubia*, *Clan Drummond* and *Hispania* were endorsed, in blank by *B, R & Co.*, and sent by post to *B, A & Co.*, of Bombay. The *Nubia* arrived at Bombay in November, and the plaintiffs received the 13 bales shipped by her, *B, A & Co.* having endorsed the bill of lading to the plaintiffs. No specific payment was made by the plaintiffs in respect of these bales, but at that time they had a sum standing to their credit in the books of *B, A & Co.* The invoices of 25 more bales, *viz.*, 13 bales *ex Clan Drummond* and 12 bales *ex Hispania*, arrived in Bombay later in November, and were handed to the plaintiffs. On the 1st December, 1890, the plaintiffs paid Rs. 25,000 to *B, A & Co.* Neither the *Clan Drummond* nor the *Hispania* had then arrived in Bombay. On the 4th December 1890, *B, R & Co.* suspended payment, and on that day a receiving order was made vesting their assets in the first defendant, *W;* and on the next day *P* was appointed special manager of the estate under s. 12 of the English Bankruptcy Act (8 Stat. 46 and 47 Vict., c. 52). At that time the bills of lading for the remaining 62 bales were still with *B, R & Co.*, who then handed them over to *P*. On the same 5th December 1890, *B, A & Co.* suspended payment in Bombay. On the 13th December 1890, *D & Co.*, telegraphed to their agents in Bombay, *R, S & Co.*, directing them to stop the goods in transit, including the 25 bales *ex Clan Drummond* and *Hispania*. On the 15th December, *R, S & Co.*, on behalf of *D & Co.*, gave notice to the agents of the *Hispania* to stop the 12 bales on board that vessel. Previously to that notice, however, the bales had been landed in the Dock at Bombay. They then gave the Dock authorities notices, but at that time the ships' agents had already given the plaintiffs a delivery order for the goods. On the same day, *viz.*, the 15th December, *R, S & Co.* gave notice to the agents of the *Clan Drummond* to stop the 13 bales on board. These bales had not then been landed, and were then still on board. The other five steamers with the remaining 62 bales duly arrived in Bombay and went into Dock. On the 22nd January 1891, the *Roumania*, the *City of Edinburgh* and the *Wistow Hall* had landed all the bales which they had on board. The *Eden Hall* had landed 9 out of the 12 which she had brought, leaving 3 still to be discharged, and the *Inchulva* had not landed any of her bales, the whole 13 being still on board. On that day (2nd January 1891) *R, S & Co.*, on behalf of *D & Co.*, wrote to the several agents of the above steamers notices of stoppage in transit of the above bales, except in the case of the *Wistow Hall*, in respect of which no notice was sent. These notices were all delivered on the 3rd January 1891:—*Held* (1) On the evidence, that the payment of the Rs. 25,000. by the plaintiffs, to *B, A & Co.* in Bombay was a payment for and on account of the 100 bales. In respect of transactions before bankruptcy, a payment to *B, A & Co.* was a payment to *B. R & Co.;* but, if that were not so, *B. A & Co.* were agents to receive payment. (2) That on the goods being shipped at Liverpool, if not at an earlier date, the property in them passed from *D & Co.* to *B, R & Co.*, and from the latter, by reason of the plaintiffs' contract with *B, R & Co.*, to the plaintiffs,—*B, R & Co.* having, by holding the bills of lading, the constructive possession of the goods, and the legal right to their actual possession, and to retain the same until their price was paid by the plaintiffs with the charges. (3) That the plaintiffs were entitled, as against the representatives of *B. R & Co.* and *B, A & Co.* in bankruptcy, to the bills of lading and the goods represented by them without further payment. *R. S & Co.* as agents of the Official Receiver had not, therefore, the right to withhold the bills of lading of any of these bales from the plaintiffs (4) On the evidence, that when *D & Co.* forwarded the goods to *B, R & Co.* at Liverpool they really started the goods on their voyage to Bombay, and that the transit lasted until the bales were "at home" in Bombay. Until then the right of *D & Co.* to stop the goods in transit lasted. (5) That effectual notice on behalf of *D & Co.* to stop in transit was given in respect of the 13 bales *ex Roumania* by the notice sent by *R, S & Co.* on the 15th December 1890. The general notice given on that day to the agents of the *Roumania* not only as to specific bales, but as to any other bales shipped on account of *G* and *R D* to *B, A & Co.*, although indefinite, covered the shipment by the *Roumania*, and was given in time to prevent the bales on board that ship from reaching "home." (6) That effectual notice by *R, S & Co.*, on behalf of *D & Co.*, to stop in transit was given in respect of the 13 bales *ex Inchulva* and the 3 bales (out of the 12) *ex Eden Hall* which were still on board and undischarged at the date of the notice of the 2nd January 1891. (7) As to the 12 bales *ex Hispania* landed prior to the notice of the 15th December and as to the 12 bales *ex City of Edinburgh* and the 9 (out of the 12) *ex Eden Hall* landed before the notice of the 2nd January 1891, and as to the 12 *ex Wistow Hall* in respect of which no notice at all was given, that the plaintiffs were entitled to them. (8) That the goods ceased to be in transit when landed in dock in Bombay. LILLADHAR JAIRAM NARRANJI *v.* WREFORD.

[I. L. R. 17 Bom. 62

SALE WHILE VENDOR IS NOT IN POSSESSION.

See ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.

[I. L. R. 16 Bom. 343

SALE-PROCEEDS.

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE.

[I. L. R. 20 Calc. 241

——, Distribution of—

See CASES UNDER SALE IN EXECUTION OF DECREE — DISTRIBUTION OF SALE-PROCEEDS.

——, Suit for refund of, wrongly paid—

See RIGHT OF SUIT — SALE IN EXECUTION OF DECREE.

[I. L. R. 12 All. 546

——, Suit to recover surplus—

See LIMITATION ACT, 1877, s. 10.

[I. L. R. 18 Calc. 234

See LIMITATION ACT, 1877, ART. 62.

[I. L. R. 18 Calc. 234

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 20 Calc. 51

See LIMITATION ACT, 1877, ART. 145.

[I. L. R. 18 Calc. 234

See MORTGAGE—POWER OF SALE.

[I. L. R. 16 Bom. 141

SALVAGE.

See CO-SHARERS — GENERAL RIGHTS IN JOINT PROPERTY.

[I. L. R. 14 All. 273

—Arrest—Excessive bail—Costs — Salvage services—Amount of award increased on appeal.] In an action of salvage in which a ship was arrested, and the bail asked for was found to be excessive, the Court (PIGOT and TREVELYAN, JJ.) *held*, that the promovents must pay the impugnants the costs occasioned by the bail required being excessive. *George Gordon*, L. R. 9 P. D. 461, followed. In this case the Court increased the amount of salvage award from £1,500 to £2,400, in consideration of the great risk incurred by the salvors in rescuing the ship and cargo, which were very valuable, from imminent destruction. IN THE MATTER OF THE SHIP "CHAMPION."

[I. L. R. 17 Calc. 84

SALVATION ARMY, OBSTRUCTION OF STREET BY.

See MADRAS POLICE ACT, 1888, s. 71.

[I. L. R. 14 Mad. 223

SANAD.

See OUDE ESTATES ACT.

[I. L. R. 17 Calc. 311

[L. R. 16 I. A. 183

[I. L. R. 17 Calc. 444

[L. R. 17 I. A. 54

SANAD—*concluded.*

——, Construction of—

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R. 15 Bom. 625

See HEREDITARY OFFICE.

[I. L. R. 16 Bom. 374

See OWNERSHIP, PRESUMPTION OF.

[I. L. R. 15 Mad. 101

See SERVICE TENURE.

[I. L. R. 14 Bom 82

See SETTLEMENT — CONSTRUCTION OF SETTLEMENT.

[I. L. R. 17 Bom. 407

——, Endorsement on—

See REGISTRATION ACT, s. 17.

[I. L. R. 14 Bom. 472

——, Production of—

See BOMBAY DISTRICT MUNICIPAL ACT, s. 33.

[I. L. R. 15 Bom. 516

SANCTION TO PROSECUTION.

		Col.
1.	Where Sanction is Necessary...	... 1010
2.	Nature. Form and Sufficiency of Sanction	... 1011
3.	Power to Grant Sanction ...	... 1012
4.	Discretion in Granting Sanction	... 1012
5.	Revocation of Sanction ...	... 1013

See CRIMINAL PROCEEDINGS.

[I. L. R. 16 Bom. 729

See CRIMINAL PROCEDURE CODE, s. 487.

[I. L. R. 14 All. 354

See MAGISTRATE, JURISDICTION OF — REFERENCE BY OTHER MAGISTRATES.

[I. L. R. 16 Mad. 461

See REVISION—CRIMINAL CASES—MISCELLANEOUS CASES.

[I. L. R. 20 Calc. 349

——, Order granting or refusing—

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R. 15 All. 61

(1) WHERE SANCTION IS NECESSARY.

1.—"*Court*" — *Collector — Appraisement proceedings— Criminal Procedure Code (Act X of* 1882), *s.* 195—*Bengal Tenancy Act (VIII of* 1885), *ss.* 69, 70.] The word "Court," used in s. 195 of the Criminal Procedure Code, without the previous sanction of which offences therein referred to, committed before it, cannot be taken cognizance of, has a wider meaning than the words

SANCTION TO PROSECUTION—*contd.*

(1) WHERE SANCTION IS NECESSARY—*concluded.*

"Court of Justice" as defined in s. 20 of the Penal Code. It includes a tribunal empowered to deal with a particular matter, and authorised to receive evidence bearing on that matter, in order to enable it to arrive at a determination. A Collector, acting in appraisement proceedings under ss. 69 and 70 of the Bengal Tenancy Act, is a Court within the meaning of the term as there used. Where therefore, in certain appraisement proceedings, some rent receipts, which were alleged to be forgeries, were filed by tenants before the Collector, and proceedings were subsequently taken against them before the Joint-Magistrate charging them with offences under ss. 465 and 471 of the Penal Code, *held*, that the Joint-Magistrate could not take cognizance of the offences charged without the previous sanction of the Collector having been granted. RAGHOOBUNS SAHOY *v.* KOKIL SINGH *alias* GOPAL SINGH.

[I. L. R. 17 Calc. 872

2.—*Criminal Procedure, Code s.* 195—*Registration Act* (*III of* 1877), *ss.* 72, 75—"*Court*,"—*Sanction for prosecution for perjury.*] A Registrar, acting under the Registration Act, ss. 72—75, is a Court for the purposes of the Criminal Procedure Code, s. 195, and his sanction is therefore necessary for a prosecution for perjury committed in respect of the presentation of a document to him for registration. ATCHAYYA *v.* GANGAYYA.

[I. L. R. 15 Mad. 138

3.—*Criminal Procedure Code, s.* 195—*Registrar*—"*Court*"—*Registration Act*, 1877, *s.* 73.] A Registrar acting under s. 73 of the Registration Act, 1877, is not a Court within the meaning of s. 195 of the Code of Criminal Procedure. *Atchyya v. Gangayya*, I. L. R. 15 Mad. 138, dissented from. QUEEN-EMPRESS *v.* RAM LAL.

[I. L. R. 15 All. 141

(2) NATURE, FORM, AND SUFFICIENCY OF SANCTION.

4.—*Criminal Procedure Code, s.* 197—*Prosecution of public servants—Indefiniteness of sanction.*] An order by the Board of Revenue sanctioning the prosecution of a Deputy Tehsildar by the Collector of the District for "bribery or such of the charges set forth in the Deputy Collector's report as he thinks likely to stand investigation by a Criminal Court" is not a legal sanction within the meaning of the Criminal Procedure Code, s. 197, and a commitment on any of such charges should be quashed. QUEEN-EMPRESS *v.* SAMAVIER.

[I. L. R. 16 Mad. 468

5.—*Criminal Procedure Code, ss.* 195, 476—*Preliminary inquiry—Penal Code* (*Act XLV of* 1860), *s.* 182—*Criminal Procedure Code* (*Act X of* 1872), *s.* 471.] Where a Deputy Commissioner issued a sanction to prosecute the accused upon an express application made on behalf of a certain person against whom a charge of torture had been made, and which he found, for reasons stated in his judgment, to be false:—*Held*, taking the order to have been one made under s. 195 of the Code of Criminal Procedure, that it was a proper sanction, inasmuch as it was given to a contemplated prosecution by a definite person. *Semble*—On the supposition that the order was one under s. 476 of the Criminal Procedure Code, that it was not necessary for the validity of an order under that section that there should be any evidence on the record contradicting the case which was thought to be false, or that there should be a preliminary inquiry. Although it may sometimes well be that a preliminary inquiry ought to be held, the adoption of a rigid rule to that effect is neither rendered imperative by the law, nor is it desirable. *In the matter of Mutty Lall Ghose*, I. L. R. 6 Calc. 308; *Queen v. Baijoo Lall*, I. L. R. 1 Calc. 450, and *Khepu Nath Sikdar v. Girish Chunder Mukerjee*, I. L. R. 16 Calc. 370, referred to and distinguished. BAPERAM SURMA *v.* GOURI NATH DUTT.

[I. L. R. 20 Calc. 474

6.—*Criminal Procedure Code, ss.* 476, 195—*Sanction by Magistrate for prosecution—Preliminary inquiry.*] When a Magistrate takes action under s. 476 of the Code of Criminal Procedure, it is not necessary to the validity of his order that he should hold a preliminary inquiry. *Baperam Surma v. Gouri Nath Dutt*, I. L. R. 20 Calc. 474, followed. QUEEN-EMPRESS *v.* MATABADAL.

[I. L. R. 15 All. 392

(3) POWER TO GRANT SANCTION.

7.—*Civil Procedure Code*, 1882, *s.* 195—*Offence committed in presence of Court—Preliminary inquiry—Case settled without evidence.*] It is competent for a Civil Court before which a case may have been settled without any evidence being gone into, and which has grounds for supposing the offence of the nature referred to in s. 195 of the Code of Criminal Procedure has been committed before it during the pendency of such case, to make a preliminary enquiry, and thus satisfy itself whether a *primâ facie* case has been made out for granting sanction, and if so satisfied, to grant sanction for the prosecution of the person alleged to have committed such offence. A sanction granted after such preliminary enquiry and based thereon is not illegal. *In re Kasi Chunder Mozumdar*, I. L. R. 6 Calc. 440, and *Zemindar of Sivagiri v. Queen*, I. L. R. 6 Mad. 29, dissented from on this point. SHASHI KUMAR DEY *v.* SHASHI KUMAR DEY.

[I. L. R. 19 Calc. 345

(4) DISCRETION IN GRANTING SANCTION.

8.—*Criminal Procedure Code, ss.* 195, 435, 478—*Forged documents filed in Court—Prosecution ordered by Court as to documents not on record—Power of High Court in revision.*] Certain documents having been put into Court in a suit pending before a District Munsif, but not given in evidence,

SANCTION TO PROSECUTION—*concld.*

(4) DISCRETION IN GRANTING SANCTION —*concluded.*

the District Munsif made an order for the prosecution of the parties who so put them in, on the ground that the documents were forgeries:—*Held*, that the High Court had power to revise the proceedings of the District Munsif; that the District Munsif was not competent to go beyond the record, *Zemindar of Sivagiri* v. *Queen*, I. L. R. 6 Mad. 29, followed; and that the order was wrong and should be set aside. ABDUL KHADAR *v.* MEERA SAHEB.

[I. L. R. 15 Mad. 224

(5) REVOCATION OF SANCTION.

9.—*Criminal Procedure Code*, 1882, *ss.* 195, 476—*High Court, jurisdiction of.*] The High Court has no power on appeal to set aside a complaint duly made by a Subordinate Court under s. 476 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* NARAKKA.

[I. L. R. 13 Mad. 144

SAPINDAS.

See HINDU LAW—INHERITANCE—GENERAL HEIRS—SAPINDAS.

[I. L. R. 16 Bom. 716

[I. L. R. 17 Bom. 303

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—COUSINS.

[I. L. R. 17 Calc. 518

See HINDU LAW—STRIDHAN—DESCRIPTION AND DEVOLUTION OF STRIDHAN.

[I. L. R. 17 Bom. 114

SARANJAM.

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R. 15 Bom. 247

See HINDU LAW—PARTITION—PROPERTY LIABLE OR NOT TO PARTITION.

[I. L. R. 15 Bom. 247, 519

——, Right to possession and management of—

See LIMITATION ACT, 1877, ART. 144—INTEREST IN IMMOVEABLE PROPERTY.

[I. L. R. 15 Bom. 247

See PENSIONS ACT, S. 4.

[I. L. R. 16 Bom. 596

See SERVICE TENURE.

[I. L. R. 17 Bom. 431

SAYER COMPENSATION.

See MUNSIF, JURISDICTION OF.

[I. L. R. 19 Calc. 8

SCHEDULED DISTRICTS ACT (XIV OF 1874).

See APPEAL IN CRIMINAL CASES—ACTS.

[I. L. R. 15 Bom. 505

See CRIMINAL PROCEEDINGS.

[I. L. R. 13 Mad. 353

——, Notification under—

See HIGH COURT, JURISDICTION OF—HIGH COURT, MADRAS—CRIMINAL.

[I. L. R. 14 Mad. 121

SEARCH WARRANT.

See ARMS ACT, S. 19.

[I. L. R. 15 All. 129

See CALCUTTA POLICE ACT, S. 5.

[I. L. R. 20 Calc. 670

See WARRANT.

[I. L. R. 13 Mad. 18

SECOND APPEAL.

See SPECIAL APPEAL.

SECRETARY OF STATE, SUIT AGAINST.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GOVERNMENT, SUITS AGAINST.

[I. L. R. 17 Calc. 290

SECUNDERABAD, CANTONMENTS OF.

See SECURITY FOR COSTS—SUITS.

[I. L. R. 21 Calc. 177

SECURITY FOR COSTS. *Col.*

1. Suits 1014
2. Appeals 1015

See LETTERS PATENT, HIGH COURT, CL. 15.

[I. L. R. 21 Calc. 473

See PRIVY COUNCIL, PRACTICE OF.

[I. L. R. 17 Calc. 693

(1) SUITS.

1.—*Practice—Suit for money—Civil Procedure Code* (*Act XIV of* 1882), *s.* 380, (*Act VI of* 1888), *s.* 5.] A suit to recover certain specified articles and money alleged to have been wrongfully seized and taken possession of by the defendant, or to recover the value thereof, is a suit for money within the terms of the second paragraph of s. 380 of the Civil Procedure Code, the term "suit for money" as there used being wider than a suit for debts. Circumstances under which the Court will order security for costs to be given by a female plaintiff in such a suit. DEGUMBARI DEBI *v.* AUSHOOTOSH BANERJEE.

[I. L. R. 17 Calc. 610

2.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 380—*Cantonment of Secunderabad.*] For the purposes of s. 380 of the Code of Civil Procedure

SECURITY FOR COSTS—*concluded.*

(1) SUITS—*concluded.*

the British Cantonment of Secunderabad is a place out of British India. HOSSAIN ALI MIRZA *v.* ABID ALI MIRZA.

[I. L. R. 21 Calc. 177

(2) APPEALS.

3.—*Discretion of Court to refuse security—Civil Procedure Code (Act XIV of* 1882), *s.* 549.] An original Court rejected, as insufficient, security offered for the purpose of conforming to an order of the High Court under s. 549, Civil Procedure Code; and refused to receive other security offered, in lieu, after the time fixed by the order had expired. This was affirmed by the High Court:—*Held*, that as the High Court had a discretion to enlarge the time allowed for finding security, and to accept other security in lieu of that rejeected or to refuse to do either, it had, under these circumstances, judicially exercised that discretion in refusing. RAJAB ALI *v.* AMIR HOSSEIN.

[I. L. R. 17 Calc. 1

4.—*Civil Procedure Code (Act XIV of* 1889), *s.* 549—*Poverty of appellant—Ground for ordering security for costs of appeal.*] Under the circumstances of this case the Court refused an application that the appellant, on the ground that he was a person without means, should give security for the costs of the appeal. HEWETSON *v.* DEAS.

[I. L. R. 21 Calc. 526

5.—*Civil Procedure Code (Act XIV of* 1882), *s* 549—*Discretion of Court—Power of Appellate Court to extend the time for furnishing security—Costs.*] Where the High Court, under s. 549, Civil Procedure Code, has demanded security from an appellant, it has power to extend the time for complying with this order on application made, as well after as before the time first fixed has expired; and may nevertheless reject the appeal, under that section, if the security is not in the end furnished. *Haidri Bai* v. *East Indian Railway Company*, I. L. R. 1 All. 687, overruled. In this case, the Registrar was directed to allow only the costs applicable to the question argued and decided. BADRI NARAIN *v.* SHEO KOER.

[I. L. R. 17 Calc. 512
[L. R. 17 I. A. 1

6.—*Civil Procedure Code (Act XIV of* 1882), *s.* 549—*Rejection of appeal—Discretion of Appellate Court to extend time for furnishing security.*] The security for the respondents' costs which the High Court had demanded under s. 549 not having been furnished within the time fixed, and the Court, in the exercise of its discretion, having refused to extend the time, the appeal was rejected under that section:—*Held*, that this was not a case for interference. MODHUSUDAN DAS *v.* ADHIKARI PRAPANNA.

[I. L. R. 17 Calc. 516

S. C. MODHUSUDAN DOSS *v.* KRISHNA PRAPANNA RAMANING DOSS.

[L. R. 17 I. A. 9

SECURITY FOR GOOD BEHAVIOUR.

—*Criminal Procedure Code (Act X of* 1882), *s.* 118—*High Court's power of interference when the amount of security is excessive—Magistrate's discretion, exercise of.*] A Magistrate ordered the accused to execute a bond for Rs. 500 for his good behaviour for one year, and to furnish two sureties for the like amount. The accused failed to furnish the required security, and was sent to prison. The High Court, being of opinion that the amount of the required security was excessive, and that the Magistrate had not exercised a proper discretion in the matter, interfered in the exercise of its revisional jurisdiction and reduced the amount. QUEEN-EMPRESS *v.* RAMA.

[I. L. R. 16 Bom. 372

SENTENCE.

Col.
1. General Cases 1016
2. Cumulative Sentences 1016

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODE.

[I. L. R. 20 Calc. 687

See JUDGMENT—CRIMINAL CASES.

[I. L. R. 21 Calc. 121

See REFORMATORY SCHOOLS ACT, S. 22.

[I. L. R. 15 All. 208

See REVISION—CRIMINAL CASES—COMMITMENT.

[I. L. R. 16 Bom. 580

See WHIPPING.

[I. L. R. 16 Bom. 357

(1) GENERAL CASES.

1.—*Passing sentence before judgment—Criminal Procedure Code (Act X of* 1882), *ss.* 366, 367.] A sentence which has been passed or a direction that an accused be set at liberty which has been given at a Sessions trial before the judgment required by s. 367 of the Code of Criminal Procedure, 1882, has been written, is illegal. QUEEN-EMPRESS *v.* HARGOBIND SINGH.

[I. L. R. 14 All. 242

2.—*Imposition of non-appealable sentences.*] The imposition by Magistrates of non-appealable sentences in cases in which the facts are such as to render it very desirable that an appealable sentence should be passed, disapproved of. JATRA SHEKH *v.* REAZAT SHEKH.

[I. L. R. 20 Calc. 483

(2) CUMULATIVE SENTENCES.

3.—*Rioting armed with deadly weapons — Separate and distinct offences — Causing hurt and grievous hurt — Resistance and obstruction to Police — Penal Code, ss.* 71, 148, 152, 332, 333.] Eight persons, who were charged with a number of others, were tried on various charges consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public

SENTENCE—*continued.*

(2) CUMULATIVE SENTENCES—*continued.*

servant when suppressing a riot (s. 152), and voluntarily causing hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). The common object set out in the charge was "to resist the execution of a decree obtained by *A* against *B* in the Court of the Second Subordinate Judge of Alipore, dated 30th April 1891, and also by means of criminal force or show of criminal force to overawe the members of the Police force in the execution of their lawful powers as Police-officers," and it was held that resistance to the Police was one of the component parts of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, *viz.*, three years' rigorous imprisonment. Seven out of the eight were convicted of offences under under s. 152, and sentenced each to an additional term of two years' rigorous imprisonment for those offences Two out of the seven accused were further convicted of offences under s. 332 of the Penal Code, the hurt therein charged being caused to Police-officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for that offence. The eighth accused who was not convicted of an offence under s. 152, was convicted of an offence under s. 333, the grievous hurt being similarly caused to a Police-officer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appeal—(1) That the sentences passed under s. 152 in addition to those under s. 148 were illegal; (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (3) that the cumulative sentences under s. 148 and ss. 332 and 333 were illegal in so far as they exceeded the maximum sentence provided for either of the offences:—*Held*, as regards (1), that as resistance to the Police was one of the component parts of the offence of rioting of which the accused were convicted and sentenced to the maximum punishment provided by s. 148, and having regard to the provisions of s. 71, the additional sentences under s. 152 were illegal. *Held*, as regards (2), that separate sentences under s. 152 and ss. 332 and 333 were illegal, as the hurt inflicted on the Police-officers was the violence used towards them which constituted the essence of the offence under s. 152. *Held*, as regards (3), that the separate sentences passed under s. 148 and ss. 332 and 333 were not illegal, there being nothing in s. 71 of the Penal Code which limits the amount of punishment that may be imposed for these offences. FERASAT *v.* QUEEN-EMPRESS.

[I. L. R. 19 Calc. 105

4.—*Penal Code, ss* 71, 148, 149, 326—*Separate sentences for rioting and grievous hurt.*] When a prisoner is convicted of rioting and of hurt, and the conviction for hurt depends upon the application of s. 149 of the Penal Code, it is illegal to pass two sentences, one for riot and one for hurt.

SENTENCE—*concluded.*

(2) CUMULATIVE SENTENCES—*concluded.*

But in such a case the two sentences would be legal, provided the total punishment does not exceed the maximum which the Court might pass for any one of the offences. When, however, the accused is guilty of rioting, and is also found to have himself caused the hurt, he may be punished both for rioting and for hurt. In such a case the total punishment can legally exceed the maximum which the Court might pass for any one of the offences. *Queen-Empress* v. *Ram Sarup*, I. L. R. 7 All. 757, approved. QUEEN-EMPRESS *v.* BANA PUNJA.

[I. L. R. 17 Bom. 260

SEPARATE OFFENCES.

See JOINDER OF CHARGES.

[I. L. R. 14 All. 502

[I. L. R. 20 Calc. 413

See SENTENCE — CUMULATIVE SENTENCES.

[I. L. R. 19 Calc. 105

SERVANT.

See MASTER AND SERVANT.

——, Liability of—

See BENGAL EXCISE ACT, 1878, s. 53.

[I. L. R. 17 Calc. 566

See BOMBAY ABKARI ACT, s. 43.

[I. L. R. 15 Bom. 45

SERVICE TENURE.

——, Suit to recover estate granted as—

See LIMITATION ACT, ART. 144—ADVERSE POSSESSION.

[I. L. R. 14 Mad. 365

1.—*Landlord and tenant—Service tenure with rent—Enhancement of rent—Resumption—Onus probandi.*] In a suit brought in 1886 by a zemindar to recover an estate granted by his predecessor to the predecessor of the defendant on a service tenure, a small money-rent being also reserved, it appeared that in 1864 the right of the plaintiff's predecessor to rent had been established by suit, but there was no evidence that the service was then dispensed with, but in 1885, it was intimated to the defendant that the service was dispensed with, and a notice to quit was given to him; the option of holding the estate at an enhanced rent was, however, given to him at the same time:—*Held*, that the plaintiff was not precluded by any implied contract from increasing the rent; and that the burden of proving the plea that the plaintiff was not entitled to eject lay on the defendants and had not been discharged. MAHADEVI *v.* VIKRAMA.

[I. L. R. 14 Mad. 365

SERVICE TENURE—*continued.*

2.—*Power of a vatandar to create a perpetual mutalik—Exclusion of successors from entire management of vatan—Kararpatra grant, construction of—Vatan—Sanad, construction of.*] The creation of a perpetual *mutalik*, with a certain share of the *vatan* as *vritti* on account of *mutaliki* is within the powers of a holder of the *vatan* for the time being, more especially when it is done for good and valuable consideration passing to the *vatan*. But it is not competent to him to exclude his successors from the entire management of the *vatan*. In 1825 the ancestor of the plaintiff, who was a *desai* and the last proprietor of the *deshgati vatan* of Tegur granted to the ancestor of the defendants a *kararpatra* (exhibit A) whereby in consideration of the services the latter was to render to the former in recovering the *vatan*, the defendants' ancestor was to enjoy one-third of the *vatan* as *vatani mutalik* from generation to generation. Subsequently the plaintiff's ancestor granted to the defendants' ancestor a *sanad* (exhibit B) which referred to the *kararpatra* already executed, and vested the entire management of the *vatan* in the defendants' ancestor from generation to generation after the said *vatan* was recovered. After protracted legal proceedings, in which the defendants' ancestor assisted the plaintiff's great-grandfather, the *vatan* was recovered in 1839. In 1846 the defendants' ancestor actually entered into the management, and continued to manage till 1850, in which year Government put the *vatan* under attachment. From 1850 to 1864 he remained out of possession in consequence of the attachment. In 1864 Government removed the attachment and restored the *vatan* to the plaintiff's father. On being asked by the Collector to appoint some one to take possession and management of the *vatan*, the plaintiff's father wrote a reply on the 15th July 1865, that he had appointed the defendants' father to manage it, and the defendants' father continued to manage it till his death in 1880. On his death a fresh *mukhtyarnama* was executed to the defendants 1 and 4 by the mother of the plaintiff, who was then a minor. Under that *mukhtyarnama* the defendants managed the *vatan* till 1882, in which year the plaintiff having attained his majority wished to manage it himself, but was opposed by the defendants. The services in connection with the *vatan* had ceased in 1864. The plaintiff, therefore, brought the present suit in 1884 to recover the *vatan*, with mesne profits. The defendants set up the *kararpatra* (exhibit A) and the *sanad* (exhibit B) by which they contended they had acquired the hereditary right to keep the whole *vatan* in their possession and management and to take one-third of the income derived from the same. The plaintiff impeached these documents as forgeries, and contended that in any case they were not binding on him, as it was not competent to his ancestor to make a permanent alienation of the *vatan* or its management beyond his lifetime. The Court of First Instance awarded the plaintiff's claim. On appeal by the defendants to the High Court:—*Held*, reversing the decree of the lower Court, that the rights of the defendants under the *kararpatra* were in force and binding on the plaintiff,

SERVICE TENURE—*continued.*

notwithstanding that the services incidental to the *vatan* had ceased. That document had been executed not merely to create a permanent office for the services of which a certain share in the *vatan* was allotted as remuneration, but it proceeded on the special service to be rendered to the family of the grantor by the recovery of the *vatan* itself. In other words, the performance of the service as *mutalik* was not the entire consideration or motive for the grant, nor did it expressly provide for the grant ceasing when the services should be no longer required. *Held* also, that the *sanad* purported to exclude the grantor's successors in the *vatan* entirely from the management of the *vatan*, and to vest it in the permanent *mutalik*, and whilst leaving them as the absolute owners of the two-thirds to deprive them of all control over it. This was virtually to attach an incident to the *vatan* inconsistent with its nature which the plaintiff's ancestor was not competent to do. The parties were entitled to the joint management of the *vatan* as tenants-in-common in respect of their undivided shares. BHIMAJI BALVANT *v.* GIRIAPA TIMAPA DESAI.

[I. L. R. 14 Bom. 82

3.—*Vatan service land, alienation of—Gordon Settlement in the Southern Maratha Country—Effect of the application of, to service vatan—Alienability of such vatan where services have been dispensed with—Vatandars (Bombay) Act III of* 1874—*Bombay Regulation XVI of* 1827—*Bombay Acts II and VII of* 1863.] *R* and his sons were members of an undivided family. In execution of certain money-decrees passed against *R* the lands in dispute were sold to various persons from whom they were afterwards bought by the defendant. In 1875 *R* died, and in 1887 his sons and grandson filed this suit against the defendant to recover the lands. They alleged that the lands were service *vatan* lands and inalienable, and that the execution-sales affected nothing except *R's* life interest, and that on *R's* death they (the plaintiffs) became entitled. They also contended that even if the Court should find that the lands were not service *vatan* lands, they were at all events ancestral property, and that the plaintiffs' interests therein were not affected by execution-sales under decrees to which they were not parties:—*Held*, on the evidence, affirming the judgment of the Court below, that, with the exception of two fields, none of the lands in question were service *vatan* lands. *Held* further, that the two fields, which were so excepted, and which had been the subject of a "Gordon Settlement" in 1864, remained inalienable *vatan* lands, although the services in respect of them had been dispensed with. The settlements made under Bombay Acts II and VII of 1863 made the lands thenceforth transferable as the property of the holder—*Radhabái* v. *Anantrav*, 1 L. R. 9 Bom. at p. 215. What is termed a "Gordon Settlement" was an arrangement, entered into in 1864 by a Committee, of which Mr. Gordon, as Collector, was Chairman, acting on behalf of Government, with the *vatandars* in the Southern Maratha Country, by which the Government relieved certain *vatan*

SERVICE TENURE—*concluded.*

dars in perpetuity from liability to perform the services attached to their offices in consideration of a *judi* or quit-rent charged upon the *vatan* lands. These settlements were given binding legal effect by cls. 2 and 3 of s. 15 of Bombay Act III of 1874. At the time when these settlements were made, lands were alienable by Bombay Regulation XVI of 1827 (as construed by the Courts) beyond the life of the actual incumbent, and the Gordon Settlement of 1864 (unless where it was otherwise specially provided by a particular settlement), was not intended by either party to those settlements to convert the *vatan* lands into the private property of the *vatandar* with the necessary incident of alienability, but to leave them attached to the hereditary offices which, although freed from the performance of services, remained intact, as shown by the definition of hereditary office in the declaratory Act III of 1874. APPAJI BAPUJI *v.* KESHAV SHAMRAV. KESHAV SHAMRAV *v.* APPAJI BAPUJI.

[I. L. R. 15 Bom. 13

4.—*Resumption by the Government of estates held on political tenure—Mixed estate of saranjam and inam so held—Jurisdiction of the Civil Court.*] The engagements entered into by treaty between the British Government and the Raja of Satara in 1819, and the terms fixed separately with the several Satara *jaghirdars* in 1820, did not impart any greater fixity of tenure than had previously belonged to the latter under Maratha rule; and their *jaghirs* remained liable to resumption at the will of the Government. The question to whom a *saranjam*, or *jaghir*, shall be granted, upon the death of its holder, is one which belongs exclusively to the Government to be determined upon political considerations; and it is not within the competency of any legal tribunal to review the decision. *Inam* villages and lands, with the *mokasa*, included originally in one *saranjam* granted under the Maratha rule for the support of troops, remained after 1820, when the rule of the Peshwa had ceased, a personal and military *jaghir*, forming a mixed estate of *saranjam* and *inam*. The tenure remained, under British rule, political; and no distinction could be drawn in this respect between the *inam* lands and the *saranjam*. The whole estate passed to the person whom the Government at its discretion for political reasons recognized as the grantee, without its being competent to any Court of law to question the decision of the executive authority in the matter. SULTAN SANI *v.* AJMODIN. SULTAN SANI *v.* BEGUMBI.

[I. L. R. 17 Bom. 431
[L. R. 20 I. A. 50

SESSIONS JUDGE.

See REFERENCE TO HIGH COURT—CRIMINAL CASES.

[I. L. R. 13 Mad. 343

See VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

[I. L. R. 14 Mad. 36

SESSIONS JUDGE, JURISDICTION OF.

See CHARGE — ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 12 All. 551

See COMMITMENT.

[I. L. R. 15 All. 205

See CRIMINAL PROCEDURE CODE, S. 437.

[I. L. R. 14 Mad. 334

See CRIMINAL PROCEDURE CODE, S. 487.

[I. L. R. 14. All. 354

See POSSESSION, ORDER OF CRIMINAL COURT AS TO — LIKELIHOOD OF BREACH OF THE PEACE.

[I. L. R. 20 Calc. 520

1.—*Criminal Procedure Code, ss.* 193, 287, 288—*Cancellation of conditional pardon to prisoner—Approver, trial of — Proof of confessional statements of accused.*] Several persons were charged with dacoity. While the case was pending, two of the accused made confessional statements; afterwards a conditional pardon was tendered to them, and they were examined as witnesses by the Magistrate and subsequently on behalf of the prosecution in the Sessions Court, to which the other accused were committed for trial. They there denied that they had been taken as approvers, whereupon the Sessions Judge placed them in the dock, called on them to plead, and permitted the depositions made by them before the Magistrate, but not their confessional statements, to be read to the jury:—*Held*, that the trial of the two persons, who had not been committed to the Sessions Court, was *ultra vires*. The proper course was to have treated the evidence given by them before the committing Magistrate as evidence in the case under s. 288 of the Code, and to have allowed the other accused to cross-examine them. *Per cur.*: The Sessions Judge committed an irregularity in refusing to place on the record the confessional statements of persons whom he treated as accused. QUEEN-EMPRESS *v.* RAMA TEVAN.

[I. L. R. 15 Mad. 352

2.—*Powers of Sessions Judge on revision—Further enquiry, power of Sessions Judge to direct—Criminal Procedure Code (Act X of* 1882), *ss.* 423, 435, 436, 439.] A complaint was made before a Magistrate, which involved a charge of dacoity against the accused person and others. The Magistrate in dealing with the case, proceeded under s. 209 of the Code of Criminal Procedure, and finding no case of dacoity *primâ facie* established, proceeded to frame charges under s. 254 of the Code charging the accused with offences under ss. 380 and 448 of the Penal Code, *viz.*, theft in a building and criminal trespass. Having heard the whole of the evidence, he then acquitted the accused under s. 258 of the Code, and gave him sanction under s. 195 to prosecute the complainant under s. 211 of the Penal Code. The complainant then applied to the Sessions

SESSIONS JUDGE, JURISDICTION OF —*concluded.*

Judge to revoke that sanction. The Sessions Judge proceeded to consider the whole case, and finding that a proper inquiry had not been made and all evidence available not taken, and that had this been otherwise, a Sessions case might have been established, directed the Magistrate to hold a further inquiry, and to proceed, in accordance with the result of such inquiry, either to commit the accused to the Sessions, or grant the sanction, as the case might be:—*Held*, that the Sessions Judge had exercised a jurisdiction not vested in him by law. Acting as a Revision Court he could send for the record for any purpose mentioned in s. 436, but he was not competent under s. 436 to direct a fresh inquiry, inasmuch as the accused had not been improperly discharged of an offence triable exclusively by a Court of Sessions, but had been acquitted of an offence within the Magistrate's jurisdiction. The Sessions Judge had, in fact, exercised the jurisdiction vested in him as an Appellate Court under s. 423, as if an appeal had been presented to him from an order of an acquittal; such powers in revision cases are only conferred on the High Court. BAIJANATH PANDEY *v.* GAURI KANTA MANDAL.

[I. L. R. 20 Calc. 633

SET-OFF.

		Col.
1. General Cases	...	... 1023
2. Cross-Decrees	...	... 1025

See JURISDICTION OF REVENUE COURT—N.-W. P. RENT AND REVENUE CASES.

[I. L. R. 15 All. 404

See MORTGAGE—ACCOUNTS.

[I. L. R. 15 Mad. 290

See MORTGAGE—REDEMPTION — RIGHT OF REDEMPTION.

[I. L. R. 15 Bom. 186

See SMALL CAUSE COURT PRESIDENCY TOWNS—JURISDICTION—SET-OFF.

[I. L. R. 20 Calc. 527

[I. L. R. 21 Calc. 419

(1) GENERAL CASES.

1.—*Civil Procedure Code, s.* 111—*Character in which claim is made*—*Written statement pleading a set-off.*] In a suit in which the plaintiff sued, as son of a deceased vakil, to recover the amount of a promissory note and bond executed by the defendant to his deceased father, the defendant alleged in his written statement that the plaintiff's father had collected funds belonging to him, as his vakil, exceeding the amount due on the promissory note and bond and asked for a decree for the difference:—*Held* (1) that the written statement must be regarded as a plaint in regard to the set-off and should have been stamped accordingly; (2) that if the plaintiff claimed as the

SET-OFF—*continued.*

(1) GENERAL CASES—*continued.*

heir and representative of his father the set-off was rightly pleaded. CHENNAPPA *v.* RAGHUNATHA.

[I. L. R. 15 Mad. 29

2.—*Civil Procedure Code, s.* 111 — *Suit for balance of account.*] The defendant was lessee from Government of a bridge of boats over the Ganges under a lease for five years, the consideration for which was payable by instalments extending over the term of the lease. The lease contained, amongst other provisions, one to the effect that the Government, if it saw fit at the expiration of the lease to farm the bridge to any other contractor, should be bound to take over the lessee's plant at a fair valuation to be determined by arbitration; and another clause provided that "should the Government, however, see fit to cancel the lease during its currency with a view to substitute a pontoon bridge, or for any other cause for which the lessee is not responsible he will be entitled to compensation from Government for all losses." The lessee died before the expiration of the lease, and the Magistrate of the District, acting on behalf of the Government, proceeded to deprive his representatives of the use of the bridge and to seize the stock and materials. The Magistrate then directed two persons to assess the value of the stock, which was ultimately fixed at Rs. 10,900. The Magistrate added a percentage, bringing the total amount up to Rs. 12,100; and a suit was filed on behalf of Government against the representatives of the deceased lessee giving credit to the defendants for such amount, and claiming the balance due in respect of the last two instalments under the contract:—*Held*, that the sum of Rs. 12,100 assessed in the manner above described could not strictly be regarded as a set-off. The suit was one for balance of account, and the defendants were entitled to dispute the correctness of the plaintiff's estimate of the item allowed in their favour. SECRETARY OF STATE FOR INDIA *v.* MADARI LAL.

[I. L. R. 13 All. 296

3.—*Civil Procedure Code, ss.* 111, 216—*Cross-claims of the nature of set-off.*] The plaintiffs agreed to purchase from the defendant certain timber. They paid part of the price in advance and took delivery of some part of the timber, but refused to take delivery of the rest, and subsequently sued the defendant to recover part of the price paid, alleging that the portion of which they had taken delivery was not of the quality contracted for:—*Held*, that in such a suit the defendant might claim by way of set-off compensation for the loss which he had incurred in the re-sale of that portion of the timber, the subject of the contract, or which the plaintiffs had failed to take delivery. Section 111 of the Code of Civil Procedure is not exhaustive of the descriptions of cross-claim which may be allowed by way of set-off. *Clark* v. *Ruthnavaloo Chetti*, 2 Mad. 296; *Kistnasamy Pillay* v. *Municipal Commissioners for the Town of Madras*, 4 Mad 120; *Kishorchand*

SET-OFF—*concluded.*

(1) GENERAL CASES—*concluded.*

Champalal v. *Madhowji Visram*, I. L. R. 4 Bom. 407; *Praji Lal* v. *Maxwell*, I. L. R. 7 All. 284; *Bhagbat Panda* v. *Bamdeb Panda*, I L. R. 11 Calc. 557; and *Chisholm* v. *Gopal Chunder Surma*, I. L. R. 16 Calc. 711, referred to. NIAZ GUL KHAN *v.* DURGA PRASAD.

[I. L. R. 15 All. 9

4.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 221—*Costs due by mortgagee to mortgagor—Set-off against the mortgage-debt—Liability of mortgage for any balance—Redemption suit.*] The mortgagor is entitled to set-off or deduct the amount of costs payable to him under the decree against or from the mortgage-debt payable by him. If the amount of the costs be larger than the mortgage-debt, the mortgagor is entitled to obtain possession at once of the mortgaged property and to recover the balance against the mortgagee. SIDU *v.* BALI.

[I. L. R. 17 Bom. 32

(2) CROSS-DECREES.

5.—*Civil Procedure Code*, *s.* 246.] Where a decree-holder holds a decree against several persons jointly, one of whom holds a decree against him singly, both decrees being executable in the same Court, it is competent to the holder of the joint decree, under the provisions of *s.* 246 of the Code of Civil Procedure, to plead such decree in answer to an application for execution of the decree against him singly. RAM SUKH DAS *v* TOTA RAM.

[I. L. R. 14 All. 339

SETTLEMENT. *Col.*

1. Construction of Settlement ... 1025
2. Effect of Settlement 1026

See ASSAM LAND AND REVENUE REGULATION.

[I. L. R. 17 Calc. 819

——, Gordon Settlement.

See SERVICE TENURE.

[I. L. R. 15 Bom. 13

——, Suit to set aside—

See SONTHAL PERGUNNAHS SETTLEMENT.

[I. L. R. 18 Calc. 146

(1) CONSTRUCTION OF SETTLEMENT.

1.—*Settlement by Government of land on which stood a hat—Calculation for purpose of settlement—Tolls—Hât—Regulation XXVII of* 1793.] A settlement of land (on which stood a *hât*) by the Government to a private person, such settlement being arrived at by taking into calculation the profits of the *hât*, does not amount to a grant of the tolls, but of the land only; the reason for looking at the tolls being to ascertain the value of the land. Such a settlement, therefore, does not imply a monopoly which will enable the holder to restrain other persons from setting up another *hât* close by. RAKHAL DAS ADDY *v.* DURGA SUNDURI DASI. DURGA SUNDURI DEBI *v.* RAKHAL DAS ADDY.

[I. L. R. 17 Calc. 458

SETTLEMENT—*continued.*

(1) CONSTRUCTION OF SETTLEMENT—*concluded.*

2.—*Summary Settlement Act* (*Bombay Act VII of* 1863)—*Nature of settlement under that Act—Settlement made and sanad issued under a mistake—Quit-rent paid by inamdars to Government under such settlement—Refund—Void agreement—Contract Act* (*IX of* 1872), *ss.* 20, 65—*Sanad, meaning and effect of.*] Under the Bombay Summary Settlement Act (Bombay Act VII of 1863), a settlement in respect of the village of Mankol was effected, in 1864, between the Government and the plaintiffs, who were the *inamdars*, and a *sanad* was granted to the plaintiffs, under the terms of which a certain yearly quit-rent was payable by them to Government in respect of the said village. At the time of the settlement the plaintiffs believed that they were the superior holders of all the lands in the village, including certain *wanta* lands. It subsequently appeared, however, that the *wanta* lands were the property of certain *girassias*, who were in possession as owners, and that the plaintiffs were not the holders of these lands within the meaning of s. 32 of Bombay Act VII of 1863. The Government, however, required the plaintiffs to pay the entire quit-rent of the village for the *Samvat* years 1939-1940, as fixed by the *sanad*. The plaintiffs paid under protest and brought this suit to recover the amount (Rs. 400-12-6) paid in respect of the *wanta* lands:—*Held*, that the plaintiffs were entitled to a refund of the quit-rent paid in respect of the *wanta* lands. A settlement under Bombay Act VII of 1863 is an agreement effected by proposal and acceptance (*see* s. 2), and is subject to the ordinary rules applicable to contracts. Here both parties entered into the settlement in the belief that the plaintiffs were the superior holders of all the lands in the village. There was, therefore, a common mistake as to a matter of fact which both parties must have regarded at the time as essential to the agreement, it being made so by the Act itself under which they assumed to contract. Such a mistake under s. 20 of the Contract Act (IX of 1872) renders the agreement void. The settlement as to the *wanta* lands might be treated as distinct from that which applied to the remaining lands of the village, the former being void, and the plaintiffs being, therefore, entitled to a refund of the quit-rent paid in respect of such lands under s. 65 of the Contract Act. A *sanad* issued under Bombay Act VII of 1863 merely declares what by s. 6 of the Act is stated to be the effect of the settlement to which both the Government and the holders of the land have consented; but it is by virtue of the settlement itself as provided by the Act, that Government are entitled to demand payment of such rent. SECRETARY OF STATE FOR INDIA *v.* SHETH JESHINGBHAI HATHISANG.

[I. L. R. 17 Bom. 407

(2) EFFECT OF SETTLEMENT.

3.—*Re settlement of land by Government after High Court decision dealing with the land—Bengal Regulation XI of* 1825—*Act XXXI of* 1858.] *Quære*—Whether a re-settlement of land by the

SETTLEMENT—*concluded.*

(2) EFFECT OF SETTLEMENT—*concluded.*

Government, as the ruling power, with persons entitled to such settlement under Bengal Regulation XI of 1825 and Act XXXI of 1858, confers upon the settlers, the owners of the old settlement, a fresh right, when made subsequent to a judgment of the High Court dealing with such land. MODHU SUDAN KUNDU *v.* PROMODA NATH ROY.

[I. L. R. 20 Calc. 732

SETTLEMENT OFFICER.

See SONTHAL PERGUNNAHS SETTLEMENT.

[I. L. R. 18 Calc. 146

——, Application to—

See GUJARAT TALUKDARS ACT, S. 10.

[I. L. R. 16 Bom. 408

——, Order made by—

See DECREE—CONSTRUCTION OF DECREE.

[I. L. R. 17 Calc. 246

——, Order on appeal from—

See SPECIAL APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R. 16 Bom. 408

——, Power of—

See BENGAL TENANCY ACT, SS. 101—115.

[I. L. R. 20 Calc. 577

[I. L. R. 21 Calc. 378

See BENGAL TENANCY ACT, S. 102.

[I. L. R 21 Calc. 38

See BENGAL TENANCY ACT, S. 103.

[I. L. R. 19 Calc. 641, 643

——, Talukdari—

See PUBLIC OFFICER.

[I. L. R. 14 Bom. 395

SHAREHOLDER.

——, Liability of—

See CASES UNDER COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

——, Right of, to vote.

See COMPANY—MEETINGS AND VOTING.

[I. L. R. 15 Bom. 164

SHARES.

——, Agreement relating to sale of—

See STAMP ACT, SCH. I, ART. 5.

[I. L. R. 13 Mad. 255

[I. L. R. 14 Bom. 316

SHARES—*concluded.*

——, "Holding shares," meaning of—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[I. L. R. 17 Bom. 197

——, Transfer of—

See COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

[I. L. R. 16 Bom. 80, 398

SHARE WARRANTS, STAMP ON.

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT.

[I. L. R. 20 Calc. 676

SHEBAIT.

See HINDU LAW—ENDOWMENT—CREATION OF ENDOWMENT.

[I. L. R. 17 Calc. 3, 557

See HINDU LAW—WILL—CONSTRUCTION—ADOPTION.

[I. L. R. 19 Calc. 513

——, Suit to remove—

See LIMITATION ACT, 1887, ART. 120.

[I. L. R. 19 Calc. 776

See TITLE—EVIDENCE AND PROOF OF TITLE—LONG POSSESSION.

[I. L. R. 19 Calc. 776

SHIP.

——, Arrest of—

See COSTS—SPECIAL CASES—ADMIRALTY OR VICE-ADMIRALTY.

[I. L. R. 17 Calc. 84

See SALVAGE.

[I. L. R. 17 Calc. 84

——, Measurement of—

See MERCHANT SHIPPING ACT, SS. 24, 26.

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See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS.

[I. L. R. 17 Bom. 129

SHIPPING LAW.

See MERCHANT SHIPPING ACT, ss. 24, 26.

[I. L. R. 14 Bom. 170

—Jettison—Right to general average contribution—Right of shippers of jettisoned cargo—Default of master—Right of shipowner—Remedies of shippers—Lien on cargo saved in consequence of jettison.] In jettison of part of a general cargo the right of those entitled to contribution, and the corresponding obligations of the contributors, originating in the actual presence of a common danger, not in the causes of it, are mutually perfected whenever the goods of some of the shippers (not being wrong-doers, or those responsible for the latter) have been advisedly sacrificed, and the property of others has been thereby preserved. Such exceptions as that recognized where the average loss has been occasioned by the ship's being unseaworthy [*Schloss* v. *Heriot*, 14 C. B. (N. S.), 59], and as that made in the refusal of contribution to shippers of deck-cargo when jettisoned, are in truth but limitations on the above rule, which have been introduced from equitable considerations Where a ship was stranded owing to the negligence of her master, and thereby ship and cargo were placed in a position of such danger as to make it necessary to jettison part of the cargo in order to save the remainder and the ship:—*Held*, that innocent owners of the jettisoned cargo were entitled to general average contribution; but that the owners of the ship were not entitled (their legal relations to the shippers not having been varied by contract). The rules of Maritime Law as to the rights and remedies in a case of jettison are: (*1st*) each owner of jettisoned goods becomes a creditor of the ship and cargo saved; and (*2nd*), he has a direct claim against each of the owners of the ship and cargo, for a *pro rata* contribution towards his indemnity. Contribution can be recovered by the owner of jettisoned goods either by direct suit, or by enforcing through the shipmaster, who is his agent for this purpose, a lien on each parcel of goods saved, belonging to each separate consignee, for a due proportion of his claim. STRANG, STEEL & Co. *v.* SCOTT & Co.

[I. L. R. 17 Calc. 362

[L. R. 16 I. A. 240

SIGNATURE.

——, Appearance of—

See PROBATE—PROOF OF WILL.

[I. L. R. 19 Calc. 65

—— of witness to bond.

See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.

[I. L. R. 15 Bom. 44

[I. L. R. 15 Mad. 70

—— to memo. of association, effect of—

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.

[I. L. R. 14 Bom. 196

SLANDER.

See DEFAMATION.

[I. L. R. 13 Mad. 34

See LIBEL.

[I. L. R. 14 Bom. 97

SLAVERY.

See UNLAWFUL COMPULSION.

[I. L. R. 19 Calc. 572

SMALL CAUSE COURT, MOFUSSIL.

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1.	Jurisdiction	1030
	(*a*) General cases ...	1030
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	(*c*) Contribution, suits for	1031
	(*d*) Crops... ...	1031
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2.	Practice and Procedure ...	1033
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(1) JURISDICTION.

(*a*) GENERAL CASES.

1.—*Village Courts Act* (*Madras Act I of* 1889), *s.* 13—*Civil Procedure Code, s.* 15—*Jurisdiction of Small Cause Courts to hear suits cognizable by Village Munsif.*] The term "Court of lowest grade" in the Civil Procedure Code, s. 15, refers only to Courts to which the Civil Procedure Code is applicable, and consequently Small Cause Courts have concurrent jurisdiction with Courts of Village Munsifs to hear suits which are cognizable by the latter. MIRKHAN *v.* KADARSA.

[I. L. R. 13 Mad. 145

(*b*) AWARDS.

2.—*Provincial Small Cause Courts Act* (*IX of* 1887), *Sch. II, cl.* 24—*Civil Procedure Code, ss.* 525, 526—*Suit to recover money under an award—Application to file award.*] A suit to recover a sum of money as payable to the plaintiff under an award which was contested was filed in a Subordinate Court on the small cause side. The Subordinate Judge returned the plaint, being of opinion that the suit was not cognizable by a Court of Small Causes. The plaint was then presented in the Court of the District Munsif as an ordinary suit, but the District Munsif returned it on the ground that the suit was cognizable by a Court of Small Causes:—*Held*, on reference by the District Judge to the High Court, that the suit was cognizable by a Court of Small Causes, and accordingly that the order made by the Subordinate Judge returning the plaint was wrong. SIMSON *v.* MCMASTER.

[I. L. R. 13 Mad. 344

SMALL CAUSE COURT, MOFUSSIL— *continued.*

(1) JURISDICTION—*continued.*

(*c*) CONTRIBUTION, SUITS FOR.

3.—*Suit for share of cost of repairs of channel—Provincial Small Cause Courts Act (IX of 1887), s. 15, and Sch. II, Art. 41.*] The plaintiff sued to recover from the defendant Rs. 227, being his share of the cost of repairing a channel, which was the property of the plaintiff and defendant:—*Held*, the suit was cognizable by a Court of Small Causes. FISCHER *v.* TURNER.

[I. L. R. 15 Mad. 155

(*d*) CROPS.

4.—*Standing crops—Immoveable property—Suit for enforcement of lien—Provincial Small Cause Courts Act, Sch. II, Art. 6.*] Standing crops are immoveable property in the sense of the General Clauses Consolidation Act (I of 1868), and of Sch. II, cl. 6 of the Provincial Small Cause Courts Act. A Small Cause Court therefore is not competent to try a suit for enforcement of a lien in respect of standing crops. CHEDA LAL *v.* MULCHAND. MINDAI *v.* KUNDAN SINGH.

[I. L. R. 14 All. 30

5.—*Act XI of 1865, s. 6 — Suit to establish right to crops on basis of title to land on which they are grown — Question of title.*] A suit to establish the plaintiff's right to a standing crop on the basis of his title to the land is an ordinary civil suit, and not a suit of a Small Cause Court nature. *Godha* v. *Naik Ram*, I. L. R. 7 All. 152, and *Shiboo Narain Singh* v. *Madden Ally*, I. L. R. 7 Calc. 608, relied on. DAKHYANI DEBEA *v.* DOLEGOBIND CHOWDHRY.

[I. L. R. 21 Calc. 430

(*e*) DAMAGES, SUITS FOR.

6.—*Provincial Small Cause Courts Act (IX of 1887)—Suit for damages for the forcible cutting and carrying away of grass.*] Act IX of 1887 does not exclude from the jurisdiction of the Small Cause Court a suit for damages for the forcible cutting and carrying away of grass. *Sungram Singh* v. *Juggun Singh*, 2 N. W. H. C. 18; *Daur Sinha* v. *Rughnundun Sinha*, 3 N W. H. C. 101; *Dorma Ayyan* v. *Rajapa Ayyan*, I. L. R. 2 Mad. 181; and *Manappa Mudali* v. *McCarthy*, I. L. R. 3 Mad. 192, referred to. KRISHNA PROSAD NAG *v.* MAIZUDDIN BISWAS.

[I. L. R. 17 Calc. 707

7.—*Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. 31—Suit for profits of land.*] A suit to recover with interest from the date of suit, Rs. 500, the value of crops alleged to have been illegally carried away by the defendant, while the plaintiff was in possession, is not a suit for the profits of land within cl. 31 of Sch. II of Act IX of 1887; such a suit is not excepted from the jurisdiction of the Small Cause Court under that Act. ANNAMALAI *v.* SUBRAMANYAN.

[I. L. R. 15 Mad. 298

SMALL CAUSE COURT, MOFUSSIL— *continued.*

(1) JURISDICTION—*continued.*

(*e*) DAMAGES, SUITS FOR—*concluded.*

8.—*Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. 35 (c)—Suit to recover costs of a criminal prosecution.*] Costs incurred in defending a criminal prosecution are recoverable only by a suit for damages for malicious prosecution. Such a suit is one for "compensation" within the meaning of cl. 35 of Sch. II of the Provincial Small Cause Courts Act (IX of 1887), and is excluded from the jurisdiction of a Small Cause Court. MAHOMED ALI *v.* BAYAMA.

[I. L. R. 14 Bom. 100

(*f*) ENDOWMENT.

9.—*Suit by Mahomedan for share of property under terms of certain endowment — Provincial Small Cause Courts Act (IX of 1887), Sch. II, cl. 18.*] A suit by a Mahomedan to obtain a share in property distributable under the terms of a certain endowment is a suit of the nature contemplated by cl. 18 of Sch. II of the Provincial Small Cause Courts Act (IX of 1887), and therefore not cognizable by a Court of Small Causes. MIHR ALI SHAH *v.* MUHAMMAD HUSEN.

[I. L. R. 14 All. 413

(*g*) GOVERNMENT, SUITS AGAINST.

10.—*Suit for compensation for damages against the Secretary of State—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 3.*] A suit was brought against the Secretary of State in a Mofussil Small Cause Court for compensation for damages done to an oil-mill by the officials of the Nalhati State Railway:—*Held*, that the suit was not within Art. 3, Sch. II of Act IX of 1887, and that it was cognizable by the Small Cause Court. BUNWARI LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 17 Calc. 290

(*h*) MAINTENANCE, SUIT FOR.

11.—*Provincial Small Cause Courts Act (IX of 1887), cl. 38, Sch. II—Suit for arrears of maintenance due under a bond or agreement.*] A suit for arrears of maintenance due under a bond or agreement is not cognizable by a Provincial Court of Small Causes under cl. 38 of Sch. II of Act IX of 1887. BHAGVANTRAO *v.* GANPATRAO.

[I. L. R. 16 Bom. 267

(*i*) MESNE PROFITS.

12.—*Suit for mesne profits—Provincial Small Cause Courts Act (IX of 1887), Sch. II, Art. 31.*] A suit for the mesne profits of land for a period during which the plaintiff had been dispossessed by the defendant comes within Art. 31. of Sch. II of Act IX of 1887, and therefore is not cognizable by a Small Cause Court. SRIRAM SAMANTA *v.* KALIDAS DEY.

[I. L. R. 18 Calc. 31

SMALL CAUSE COURT, MOFUSSIL—*continued.*

(1) JURISDICTION—*concluded.*

(*j*) MONEY HAD AND RECEIVED.

13.—*Suit to recover share of profits of inam villages—Provincial Small Cause Courts Act (IX of 1887), Sch. II. cls. (4), (31), s. 23, cl. (1).*] In a suit for the recovery of a certain share in the profits of *inam* villages, of which the defendant was the manager, the only relief claimed by the plaintiffs being payment of money, namely, Rs. 130:—*Held*, that the suit was for money had and received for plaintiffs' use, and was cognizable by the Court of Small Causes. It did not fall under cl. (4) of Sch. II of the Provincial Small Cause Courts Act (IX of 1887), as it was not a suit for the possession of immoveable property, or for recovery of an interest in such property. If the plaintiffs had alleged that the defendant had "wrongfully received" the plaintiffs' share of profits, then the suit would have fallen under cl. (31), Sch. II of the Act. DAMODAR GOPAL DIKSHIT *v.* CHINTAMAN BALKRISHNA KARVE.

[I. L. R. 17 Bom. 42

(*k*) MUNICIPAL TAX.

14.—*Wrongful assessment of profession tax — Madras District Municipalities Act (Madras Act IV of 1884), ss. 49, 50—Provincial Small Cause Courts Act (IX of 1887), Sch. II, para. 1—Order of a Local Government.*] The Municipality at Tuticorin demanded Rs. 50 as profession tax from the South Indian Railway Company which had already paid profession tax to the Municipality at Negapatam. The Company complied with the demand under protest and sued the Municipality for a refund of the amount paid on the Small Cause Side of the District Munsif's Court:—*Held*, the Court had jurisdiction to hear and determine the suit; ss. 49 and 50 of the Madras District Municipalities Act of 1884, and Sch. II, cl. 1 of the Provincial Small Cause Courts Act (IX of 1887) are not applicable to such a suit. TUTICORIN MUNICIPALITY *v.* SOUTH INDIAN RAILWAY CO.

[I. L. R. 13 Mad. 78

(*l*) RENT, SUIT FOR.

15.—*Suit for the recovery of damages for the use and occupation of land.*] A suit for the recovery of damages for the use and occupation of land is within the jurisdiction of the Mofussil Small Cause Courts. MAKHAN LALL DATTA *v.* GORIBULLAH SARDAR.

[I. L. R. 17 Calc. 541

(2) PRACTICE AND PROCEDURE.

(*a*) NEW TRIALS AND REVIEWS.

16.—*Application for new trial—Deposit of decretal amount or security—Provincial Small Cause Courts Act (IX of 1887), s. 17.*] It is a condition precedent to the granting of a new trial that, in accordance with the provisions of s. 17 of the Provincial Small Cause Courts Act, 1887, an applicant should at the time of presenting his application for new trial deposit in Court the decretal amount, or tender security for payment of the same. *Ramasami* v. *Kurisu*, I. L. R. 13 Mad. 178, dissented from. JOGI AHIR *v.* BISHEN DAYAL SINGH.

[I. L. R. 18 Calc. 83

17.—*Provincial Small Cause Courts Act (IX of 1887), s. 17—Deposit of costs—Civil Procedure Code, 1882, s. 624—Power of Judge to review order of predecessor.*] On 23rd February 1888 the Subordinate Judge of Tinnevelly dismissed with costs a small cause suit on the ground that the plaintiff had not secured the attendance of his witnesses. On 29th February the plaintiff presented a petition for review on which notice was directed to issue, but he did not deposit in Court the amount of the costs payable under the decree. On 17th April the petition having come on for hearing, the Judge directed that the petitioner should "first" deposit the amount of the defendant's costs under s. 17 of the Provincial Small Cause Courts Act, which was accordingly done on the following day. On 21st April the petition, which proceeded on grounds other than those mentioned in s. 624 of the Code of Civil Procedure, came on for hearing before the Officiating Subordinate Judge, who had assumed charge of the Court between the last-mentioned dates: he entertained the petition, but dismissed it. The plaintiff preferred a revision petition against the order dismissing his petition:—*Held*, by the Full Bench, following the cases of *Karoo Singh* v. *Deo Narain Singh*, I. L. R. 10 Calc. 80, and *Fazal Biswas* v. *Jemadar Sheikh*, I. L. R. 13 Calc. 231, that, having regard to the provisions of s. 624 of the Code of Civil Procedure, the Officiating Subordinate Judge had jurisdiction to hear and determine the case on review:—*Held*, by PARKER and WILKINSON, JJ., that the provisions of s. 17 of the Provincial Small Cause Courts Act as to the deposit of costs on an application for review are not mandatory, but merely directory. RAMASAMI *v.* KURISU.

[I. L. R. 13 Mad. 178

SMALL CAUSE COURT, MOFUSSIL—*concluded.*

(2) PRACTICE AND PROCEDURE—*concluded.*

(*a*) NEW TRIALS AND REVIEWS—*concluded.*

SMALL CAUSE COURT, PRESIDENCY TOWNS.

1. Jurisdiction 1035
   (*a*) General Cases 1035
   (*b*) Army Act 1035
   (*c*) Legacy, suit for... ... 1035
   (*d*) Set-off 1036
   (*e*) Title, question of ... 1037
2. Practice and procedure 1037
   (*a*) New trials 1037
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See CLAIM TO ATTACHED PROPERTY.

[I. L. R. 18 Calc. 296

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

(1) JURISDICTION.

(*a*) GENERAL CASES.

1.—*Non-resident foreigner carrying on business by his munim in Bombay—Presidency Towns Small Cause Courts Act* (*XV of* 1882), *s.* 18.] Where a foreigner who did not reside in Bombay carried on business there by his *munim*:—*Held* that, under s. 18 (1) of the Small Cause Courts Act (XV of 1882), the Small Cause Court in Bombay had jurisdiction to try a suit brought against him in that Court:—*Per* SARGENT, C. J.—*Primâ facie* the word 'defendants' in cl. (*b*) of s. 18 has the same meaning in each of the three cases in which that clause gives jurisdiction to the Court; and as the word clearly includes non-British subjects among the defendants over whom the clause gives jurisdiction if they are "resident" or "personally work for gain," within the territorial limits of the Small Cause Court, it would be a strained construction to hold that it did not include them among the defendants over whom the clause gives jurisdiction on the ground that they are "carrying on business" within the limits. Although it is true that a non-British subject who does not personally carry on business within the territorial limits of the Court does not make himself personally subject to the municipal law of British India, still, by establishing his business in British India, from which business he expects to derive profit, he accepts the protection of the territorial authority for his business, and his property resulting from it, and may be fully regarded as submitting to the Courts of the country. GIRDHAR DAMODAR *v.* KASSIGAR HIRAGAR.

[I. L. R. 17 Bom. 662

(*b*) ARMY ACT.

2.—*Presidency Towns Small Cause Courts Act* (*XV of* 1882)—*Army Act*, 1881 (44 *and* 45 *Vict.*, *c.* 58), *s.* 151—*Army* (*Annual*) *Act*, 1888 (51 *Vict.*, *c.* 4), *s.* 7—*Leave to sue.*] The jurisdiction given to Presidency Small Cause Courts by Act XV of 1882, s. 18, is not affected by 51 Vict., c. 4, s. 7. WATTS & CO. *v.* BLACKETT.

[I. L. R. 18 Calc. 144

3.—*Presidency Towns Small Cause Courts Act* (*XV of* 1882), *cl.* 2, *ss.* 1. 18—*Army Act*, 44 *and* 45 *Vict.*, *c.* 58, *sub-section* 1, *s.* 151—51 *Vict.*, *c.* 4, *s.* 7.] The words of s. 7 of 51 Vict., c. 4, amending sub-section 1 of s. 151 of 44 and 45 Vict., c. 58, are meant to restrict the words "within the jurisdiction, &c" (found in sub-section 1 of s. 151) to persons resident within it, so as to meet and exclude the case of persons casually within the jurisdiction and not actually resident within it, and are limited to that purpose, and do not therefore affect the powers conferred by s. 18 of Act XV of 1882. WALLIS & CO. *v.* BAILEY.

[I. L. R. 18 Calc. 372

(*c*) LEGACY, SUIT FOR.

4.—*Presidency Towns Small Cause Courts Act* (*XV of* 1882), *s.* 19—*Suit for legacy—Equitable jurisdiction.*] A suit to recover a legacy brought in the Small Cause Court, in which there is no allegation that the executors were in possession of sufficient assets to pay the legacy, or that they had ever assented to the payment of the legacy, is one for the administration of an estate and for an account: such a suit the Small Cause Court has no jurisdiction to try. OKHOY COOMAR BONNERJEE *v.* KOYLASH CHUNDER GHOSAL.

[I. L. R. 17 Calc. 387

(*d*) SET-OFF.

5.—*Claims arising out of the same transaction—Presidency Small Cause Court—Jurisdiction—Equitable right of set-off—Civil Procedure Code* (*Act XIV of* 1882), *ss.* 111, 216—*Presidency Small Cause Courts Act* (*XV of* 1882), *ss.* 18, *Expl.* 1, 24.] In a suit in the Calcutta Small Cause Court to recover Rs. 1,197-5-6, the price of goods sold and delivered, the defendants claimed to set-off a sum of Rs. 2,738-4, being the loss which they alleged they had sustained by reason of the plaintiff's breach of contract, and claimed judgment for the sum of Rs. 1,540-14-6 after giving the plaintiff credit for the sum claimed by him:—*Held*, that the defendants' claim could be set-off if it were one which the Small Cause Court had jurisdiction to try; the claim being to obtain credit for or receive the entire sum of Rs. 2,738-4, the Small Cause Court was without jurisdiction, and no set-off could therefore be allowed. An equitable right of set-off exists in this country when both the claim of the plaintiff and that of the defendant arise out of the same transaction, although the claim sought to be set-off is not within the provisions of s. 111 of the Code of Civil Procedure. *Quære*—Whether a decree could be passed in favour of the defendant for any balance which might be found due to him. BROJENDRA NATH DAS *v.* BUDGE-BUDGE JUTE MILL CO.

[I. L. R. 20 Calc. 527

6.—*Presidency Towns Small Cause Courts Act* (*XV of* 1882), *s.* 18, *Expl.* 1—"*Admitted set-off*"—*Debt—Civil Procedure Code* (*Act XIV of* 1882), *s.* 111.] The plaintiffs sued in the Calcutta Court of Small Causes for breach of contract, the damages for which breach amounted to Rs. 2,148, but they deducted from this sum of Rs. 2,148, by way of set-off, a sum of Rs. 500 which was due by them to the defendant on account of an entirely different transaction, thereby reducing their claim to Rs. 1,648. The defendant admitted that the Rs. 500 was due to him by the plaintiffs, but did not, either before suit or at the trial, agree to its being set-off against the plaintiffs' claim:—*Held* by MACPHERSON and TREVELYAN, JJ. (PETHERAM, C.J., dissenting), that the sum of Rs. 500 could not, under Explanation I of s. 18 of Act XV of 1882, be set-off, and that the suit must be dismissed as being beyond the jurisdiction of the Court. RAMDEO *v.* POKHIRAM.

[I. L. R. 21 Calc. 419

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

(1) JURISDICTION—*concluded.*

(*e*) TITLE, QUESTION OF.

7.—*Questions of title incidentally raised—Act XV of* 1882, *s.* 19, *cl.* (*g*)—*Suit for rent—"Suits for determination of any right or interest in immoveable property."*] When a suit is brought in a form cognizable by a Court of Small Causes, that Court cannot decline jurisdiction, because a question of title to immoveable property is incidentally raised. It is the nature of the suit as brought by the plaintiff, and not the nature of the defence, that determines whether or not the Court of Small Causes has jurisdiction. Clause (*g*) of s. 19 of the Presidency Small Cause Courts Act (XV of 1882) refers to suits brought expressly for the purpose of obtaining a decree determining a right or interest in immoveable property, and cannot include a suit brought for moveable property, or money, in which a question of title may be raised by the defendant. The plaintiffs sued in the Presidency Court of Small Causes to recover *fazendari* rent from the holder of *fazendari* land. The defendant pleaded that no rent had been paid for the land since 1846, that the claim was time-barred, and that the plaintiffs had no title to the land in question The Judges of the Court of Small Causes dismissed the suit, on the ground that the defence raised a *bonâ fide* question of title to immoveable property which ousted their jurisdiction:—*Held*, reversing the lower Court's decision, that the suit was cognizable by the Court of Small Causes. BAPUJI RAGHUNATH *v.* KUVARJI EDULJI UMRIGAR

[I. L. R. 15 Bom. 400

(2) PRACTICE AND PROCEDURE.

(*a*) NEW TRIALS.

8.—*Presidency Small Cause Courts Act* (*XV of* 1882), *s.* 37—*Ex-parte decree—Application to set aside ex-parte decree.*] Section 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an *ex-parte* decree. An application to set aside an *ex-parte* decree passed by a Presidency Court of Small Causes falls within the terms of s. 108 of the Code of Civil Procedure. ROSHANLAL *v.* LACHMI NARAYAN.

[I. L. R. 17 Bom. 507

(*b*) RE-HEARING OF SUIT.

9.—*Presidency Towns Small CaCuse ourts Act* (*XV of* 1882), *ss.* 38, 71 — *Stamp — Re-hearing, application for—Petition insufficiently stamped—Deficiency of stamp, power to make good, after period of limitation allowed for presentation of application.*] On the 7th April, being the last day on which such application could be made under the provisions of s. 38 of the Presidency Small Cause Courts Act, an application was made to the High Court under that section for the re-hearing of a suit which had been dismissed by the Small Cause Court. The application was made by petition at the rising of the Court, and not being a regular motion day, the hearing of the matter

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

(2) PRACTICE AND PROCEDURE—*continued.*

(*b*) RE-HEARING OF SUIT—*concluded.*

was postponed till the 9th April. On that day, on the application being brought on, it appeared that the petition only bore a 7-rupee stamp instead of one of the much larger value required by s. 71 of the Act. It was contended on behalf of the petitioner that the deficiency could then be made up, and that he was entitled to have the application heard:—*Held*, that this could not be done. The eight days allowed by s. 38 expired on the 7th April, and had the application been then considered, it could not have been received, but must have been rejected, as s. 71 requires the proper fee to be paid before the application can be received. Although the consideration of the application was deferred to the 9th April, that made no difference, as the eight days had expired before the petition was in such a condition that it could be received. NORENDRANATH BOSE *v.* ABINASH CHUNDER ROY.

[I. L. R. 18 Calc. 445

10.—*Miscarriage or failure of justice—Withdrawal before judgment of request to refer case for the opinion of the High Court.*] In a suit in the Court of Small Causes, in which questions of law and fact were raised, the plaintiffs at first asked the Judge to state a case for the opinion of the High Court under s. 69 of Act XV of 1882. The Judge was willing to do so, but the plaintiffs withdrew their request. The Judge thereupon delivered his judgment and dismissed the suit. The plaintiffs then applied to the High Court for a re-hearing under s 38 of Act XV of 1882. It was contended that the Judge was wrong in his view of the law as applicable to the facts:—*Held*, that, even if that were the case, there was no "miscarriage or failure of justice" within the meaning of s. 38, and that the plaintiffs were not entitled to a re-hearing. VASSONJI TRICUMJI AND Co. *v.* SOUTHERN MARATHA RAILWAY Co.

[I. L. R. 17 Bom. 14

(*c*) REFERENCE TO HIGH COURT.

11.—*Presidency Towns Small Cause Courts Act* (*XV of* 1882), *ss.* 37, 69—*Application to Full Bench for new trial.*] The Full Bench of a Presidency Court of Small Causes cannot state a case for the opinion of the High Court on the hearing of an application for a new trial made under Act XV of 1882, s. 37, such hearing not being the "hearing of a suit" within the meaning of s. 69 of that Act. OAKSHOTT *v.* BRITISH INDIA STEAM NAVIGATION Co.

[I. L. R. 15 Mad. 179

12.—*Small Cause Courts* (*Presidency*) *Act XV of* 1882, *s.* 69—*Case stated for opinions of High Court—Mode of stating case—Question of law or usage.*] In a suit brought in the Small Cause Court by the plaintiffs against the defendant for damages for breach of contract to deliver goods, the only dispute was as to the principle on which

SMALL CAUSE COURT, PRESIDENCY TOWNS—*concluded.*

(2) PRACTICE AND PROCEDURE—*concluded.*

(*c*) REFERENCE TO HIGH COURT—*concluded.*

damages were to be assessed. The defendant paid into Court the sum of Rs. 779-10-0. At the close of the hearing, and before judgment was delivered, the plaintiffs' attorney informed the Chief Judge that he would require a case to be stated for the opinion of the High Court under s. 69 of the Presidency Small Cause Courts Act (XV of 1882), unless the decree were in his favour. The Judge thereupon desired him to state the exact question of law he would wish to be referred, but he declared himself unable to do so until after judgment was delivered. He said he could not then say anything more than that he would require a case to be stated for the opinion of the High Court on any question of law that might arise in the case. The Chief Judge thereupon stated the facts to the High Court and referred the following general question for its opinion:—"Whether, on the facts above set forth, the plaintiffs are entitled to recover from the defendant any, and if so what, sum greater than Rs. 779-10-0 paid into Court by the defendant?" On the reference coming before the High Court a preliminary objection was taken as to whether the reference was in proper form, no question of law or usage having the force of law having been formulated for the opinion of the Court:—*Held* (FARRAN, J., doubting), that the reference should be sent back to be amended by stating the precise question arising in the case. RALLI BROTHERS *v* GOCULBHAI MULCHAND.

[I. L. R. 15 Bom. 376

13.—*Presidency Towns Small Cause Courts Act (XV of* 1882), *s.* 69—*Requisition for reference, time for making.*] A party requiring a Judge of the Small Causes Court to make a reference to the High Court under s. 69 of the Small Cause Court Act (XV of 1882) must do so before the Judge has delivered his judgment. BANK OF BENGAL *v.* VYABHOY GANGJI.

[I. L. R. 16 Bom. 618

SONTHAL PERGUNNAHS.

See TRANSFER OF CRIMINAL CASE.

[I. L. R. 18 Calc. 247

SONTHAL PERGUNNAHS SETTLEMENT.

1.—*Act XXXVII of* 1855, *s.* 2—*Regulation III of* 1872, *ss.* 3, 4—*Bengal Civil Courts Act (XII of* 1887)—*Suit exceeding Rs.* 1,000 *in value—Officer invested with power of a Civil Court—"Court."*] The effect of s. 2 of Act XXXVII of 1855 and s. 3 of Regulation III of 1872 is to make the general laws and regulations, including the provisions of the Code of Civil Procedure, applicable in the Sonthal Pergunnahs to suits exceeding Rs. 1,000 in value without any qualifications; provided that such suits are tried in the Courts

SONTHAL PERGUNNAHS SETTLEMENT—*concluded.*

established under the Civil Courts Act (XII of 1887) An officer in the Sonthal Pergunnahs invested by Local Government with the powers of a Civil Court under s. 4 of Regulation III of 1872 is a Court established under Act XII of 1887 within the meaning of s. 3 of the Regulation. DUNGARAM MARWARY *v.* BAJKISHORE DEO.

[I. L. R. 18 Calc. 133

2—*Regulation III of* 1872, *ss.* 11, 25—*Suit regarding matter decided by Settlement Court—Settlement Officer, finding of—Jurisdiction of Civil Court—Right of suit—Suit to set aside settlement and for possession.*] Where a suit was brought to establish, by avoiding the instrument under which he held, that the defendant was not a tenant of the lands in dispute, and to oust him from possession, and he had been recorded in the record of rights made by the Settlement Officer as a tenant of such lands, *held*, that the suit was one regarding a matter decided by the Settlement Court "within the meaning of s. 11 of the Sonthal Pergunnahs Settlement Regulation (III of 1872), and was therefore not maintainable. The introductory words of cl. 4 of s. 25 of the Regulation, which impose a personal limitation on the jurisdiction of the Civil Courts, apply to suits of all the three classes to which the clause relates; so that the bar to the jurisdiction can take effect on a suit in the third of the three classes only when it is both a "suit to contest the finding or record of the Settlement Officer," and involves also the determination of "the rights of zemindars or other proprietors as between themselves." RAM CHURN SING *v.* DHATURI SING.

[I. L. R. 18 Calc. 146

SOVEREIGN PRINCE, SUIT AGAINST.

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.

[I. L. R. 15 Mad. 494

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See APPEAL—ACTS—BENGAL TENANCY ACT.

[I. L. R. 17 Calc. 326

See BENGAL TENANCY ACT, s. 108.

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See DEKHAN AGRICULTURISTS ACT, s. 3.

[I. L. R. 14 Bom. 387

[I. L. R. 15 Bom. 30

[I. L. R. 16 Bom. 128

See DEKHAN AGRICULTURISTS ACT, s. 53.

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See REVIEW—GROUND FOR REVIEW.

[I. L. R. 15 Bom. 650

SPECIAL OR SECOND APPEAL.

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[I. L. R. 13 Mad. 273

(1) ADMISSION OR SUMMARY REJECTION OF APPEAL.

1.—*Civil Procedure Code, ss.* 54, 543, 551, 582, 584—*Summary rejection of memorandum—Reasons for rejection.*] *Per* EDGE, C.J.—A Judge to whom a memorandum of appeal from an Appellate decree is presented for admission is entitled to consider whether any of the grounds mentioned in s 584 of the Code of Civil Procedure in fact exist and apply to the case before him, and if they do not, to reject the memorandum of appeal summarily. Section 551 of the Code of Civil Procedure applies to appeals which have been admitted. *Per* AIKMAN, J.—When a memorandum of appeal is summarily rejected, whether under s. 543, or under s. 54 read with s. 582 of the Code of Civil Procedure, the reasons for such rejection should be recorded: *sed quære* whether, unless it appears from the memorandum of appeal taken by itself that a second appeal does not lie, a second appeal can be summarily rejected, and should not rather be dealt with under s. 551 of the Code. *Semble*:—That a ground of appeal to the effect that the lower Appellate Court has misconstrued a document is not one of the grounds of second appeal contemplated by s. 584 of the Code of Civil Procedure. RUDR PRASAD *v.* BAIJNATH.

[I. L. R. 15 All. 367

(2) ORDERS SUBJECT OR NOT TO APPEAL.

2.—*Order of Appellate Court confirming a sale—Civil Procedure Code,* 1889, *s.* 312.] An order of an Appellate Court under s. 312 confirming a sale cannot be the subject of a second appeal. NANA KUMAR ROY *v.* GOLAM CHUNDER DEY.

[I. L. R. 18 Calc. 422

3.—*Appeal from District Judge—Proceeding to be adopted when a District Court erroneously returns an appeal petition for presentation in High Court—Civil Procedure Code, ss.* 57, 588, 589, 622.] Certain members of a Moplah family sued the others in a Subordinate Court to recover their distributive share under Mahomedan law. The property to be divided was more than Rs. 5,000 in value, but the share claimed by the plaintiffs was less. The Subordinate Judge passed a decree, against which an appeal was preferred to the District Court, but the District Judge returned the appeal for presentation to the High Court. The appellants preferred a second appeal to the High Court against the decision of the District Judge, and also presented a petition praying for the revision of his proceedings under the Civil Procedure Code, s. 622:—*Held*, that neither a second appeal (which did not lie in such a case) nor a petition under the Civil Procedure Code, s. 622, was the appropriate proceeding to be adopted by the appellants, but an appeal as from an order made under the Civil Procedure Code, ss. 57, 582, which would lie under ss. 588, cl. (*c*), and 589. The error of the appellants being one of form merely, the Court amended the second appeal as an appeal from an order of the District Court and directed the District Judge to receive and dispose of the appeal from the Subordinate Judge. KUNHIKUTTI *v.* ACHOTTI.

[I. L. R. 14 Mad. 462

4.—*Decree ex-parte.*] A second appeal lies from an *ex-parte* decree of a lower Appellate Court. MARUTI *v.* VITHU.

[I. L. R. 16 Bom. 117

5.—*Decision of the District Court on appeal from the Talukdari Settlement Officer.*] A decision of the District Court on appeal from the Talukdari Settlement Officer is subject to second appeal to the High Court JAMSANG DEVABHAI *v.* GOYABHAI KIKABHAI.

[I. L. R. 16 Bom. 408

(3) SMALL CAUSE COURT SUITS.

(*a*) GENERAL CASES.

6.—*Civil Procedure Code, s.* 586—*Provincial Small Cause Courts Act (IX of* 1887), *s.* 23—*Suit transferred to regular side.*] A suit of a nature cognizable by a Small Cause Court does not cease to be so within the meaning of the Civil Procedure Code, s. 586, because the Court in which it was instituted as a small cause suit returned the plaint to be filed on the regular side under the Provincial Small Cause Courts Act, s. 23, on the ground that the suit involved questions of title. A second appeal therefore does not lie in such a case. MUTTUKARUPPAN *v.* SELLAN.

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SPECIAL OR SECOND APPEAL—*contd.*

(3) SMALL CAUSE COURT SUITS—*continued.*

(*a*) GENERAL CASES—*concluded.*

7.—*Suit of the nature cognizable in Court of Small Causes—Transfer of decree—Civil Procedure Code, ss.* 223, 228, 586.] Where the original suit is a suit of the nature cognizable in Courts of Small Causes, and the subject-matter of the suit does not exceed Rs. 500 in value, no second appeal will lie in respect of an order made in execution-proceedings relating thereto, whether such proceedings are taken in the Court which passed the decree or in that to which the decree may have been transferred for execution. *Nazar Husain* v. *Kesri Mal*, I. L. R. 12 All. 581, approved. HARAKH *v.* RAM SARUP.

[I. L. R. 12 All. 579

8.—*Suit of the nature cognizable in Court of Small Causes—Civil Procedure Code, ss.* 586, 622—*Superintendence of High Court.*] For the purposes of an appeal, whether from a decree in a regular suit or from an order passed in execution of such decree, the pecuniary test of jurisdiction is the valuation of the original suit in which the decree was passed, and not merely the actual amount affected by the order sought to be appealed. Therefore where execution was applied for in the Munsif's Court in respect of a sum of Rs. 422-14-0, the value of the matter in dispute in the original suit (which was of the nature cognizable by a Court of Small Causes) having been above Rs. 500, and the Munsif's order having been upheld in appeal by the District Judge, revision of both orders was applied for in the High Court:—*Held*, that no proceedings by way of revision could be taken, because a second appeal would lie from the order of the District Judge. NAZAR HUSAIN *v.* KESRI MAL.

[I. L. R. 12 All. 581

9.—*Question of jurisdiction—Provincial Small Cause Courts Act (IX of* 1887), *s.* 16—*Civil Procedure Code (Act XIV of* 1882), *ss.* 586, 646*B*—*Civil Procedure Code Amendment Act (VII of* 1888), *s.* 60.] Notwithstanding s. 16 of the Provincial Small Cause Courts Act, the High Court has, on a case being submitted to it under s 646B. of the Civil Procedure Code, full power to consider the matter of jurisdiction or to deal with it on the merits so as to do substantial justice without putting the parties to the expense of a fresh trial. Where a suit, cognizable by a Small Cause Court, was tried both in the Munsif's and District Judge's Courts without objection to the jurisdiction, *held*, on a second appeal to the High Court, that s. 646B of the Civil Procedure Code must be read with s. 16 of the Provincial Small Cause Courts Act, so as to modify its full effect in a case wrongly tried by an ordinary Civil Court and taken in appeal to the District Court: both parties having submitted to the jurisdiction, it was not competent to either of them on second appeal to plead the want of jurisdiction, so as to render the proceedings taken in the suit void. SURESH CHUNDER MAITRA *v.* KRISTO RANGINI DASI.

[I. L. R. 21 Calc. 249

SPECIAL OR SECOND APPEAL—*contd.*

(3) SMALL CAUSE COURT SUITS—*concluded.*

(*b*) DAMAGES, SUITS FOR.

10.—*Provincial Small Cause Courts Act (IX of* 1887), *Sch. II, cl.* 31—*Suit for profits of land—Civil Procedure Code, s.* 586.] The plaintiff sued on the Small Cause side of a Subordinate Court before the Provincial Small Cause Courts Act, 1887, came into operation, to recover with interest from the date of suit Rs. 500, the value of crops alleged to have been illegally carried away by the defendant, while the plaintiff was in possession. The defendant raised a plea to the jurisdiction of the Court, and the Judge, without recording any decision on its validity, directed that the plaint be presented on the regular side of the Court for the reason that it raised questions of complexity. It was so presented after the above Act had come into operation. The plaintiff obtained a decree which was reversed on appeal. A petition of second appeal was presented by the plaintiff The defendant objected that no second appeal lay under the Civil Procedure Code, s. 586:—*Held*, that the objection should prevail, since the suit was not excepted from the jurisdiction of the Small Cause Court under the Provincial Small Cause Courts Act of 1887. ANNAMALAI *v.* SUBRAMANYAN.

[I. L. R. 15 Mad. 298

(*c*) MESNE PROFITS.

11.—*Suit for mesne profits—Provincial Small Cause Courts Act (IX of* 1887), *Sch. II, Art.* 31.] Where the plaintiff, after obtaining a decree in a suit for possession of certain land, of which he had been dispossessed by the defendants, brought a suit in the Munsif's Court for mesne profits for the period during which he had been kept out of possession, and the suit, though partly decreed by the Munsif, was dismissed by the District Judge:—*Held*, that such a suit was not cognizable by a Small Cause Court, and therefore a second appeal in the suit would lie to the High Court. SRIRAM SAMANTA *v.* KALIDAS DEY.

[I. L. R. 18 Calc. 316

(4) GROUNDS OF APPEAL.

(*a*) QUESTIONS OF FACT.

12.—*Civil Procedure Code, s.* 584—*Grounds of second appeal.*] Under the Code no second appeal will lie, except on the grounds specified in s. 584. There is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error may seem to be. Where there is no error or defect in the procedure, the finding of the first Appellate Court upon a question of fact is final, if that Court had before it evidence proper for its consideration in support of the finding *Anangamanjari Chowdhrani* v. *Tripura Sundari Chowdhrani*, L. R. 14 I. A. 101: I. L. R. 14 Calc. 740; and *Pertab Chunder Ghose* v. *Mohendra Purkait*, L. R. 16 I. A. 233: I. L. R. 17 Calc. 291, referred to and followed. *Futtehma Begum* v. *Mohamed Ausur*, I. L. R. 9 Calc. 309, and *Nivath Singh* v. *Bhikki*

SPECIAL OR SECOND APPEAL—*contd.*

(4) GROUNDS OF APPEAL—*continued.*

(*a*) QUESTIONS OF FACT—*continued.*

Singh, I. L. R. 7 All. 649, overruled. DURGA CHOWDHRANI *v.* JEWAHIR SINGH CHOWDHRI.

[I. L. R. 18 Calc. 23
[L. R. 17 I. A. 122

13.—*Doubtful findings of fact—Consideration of evidence.*] No Court of Second Appeal can entertain an appeal upon any question as to the soundness of findings of fact by the Court of First Appeal; and if there is evidence to be considered, the decision of that Court, however unsatisfactory it might be, if examined, must stand final. RAMRATAN SUKAL *v.* NANDU.

[I. L. R. 19 Calc. 249
[L. R. 19 I. A. 1

14.—*Question of what passes at sale in execution of decree—Mixed question of law and fact.*] The question what is actually bargained and paid for at an execution-sale is a mixed question of law and fact, and the High Court on second appeal is not bound by the finding of the Court of First Appeal with regard to it. GNANAMMAL *v.* MUTHUSAMI.

[I. L. R. 13 Mad. 47

15.—*Finding of fact unsupported by reasons.*] The High Court is not bound, in second appeal, by a finding of fact of a lower Appellate Court, when such finding is not supported by any reason. PURSHOTAM SAKHARAM *v.* DURGOJI TUKARAM.

[I. L. R. 14 Bom. 452

16.—*Omission to consider important portions of the evidence—Finding based on statements, not on evidence.*] The lower Court, in its judgment, having omitted to make any mention of certain important documents, or their bearing on the terms of a tenancy which were in question:—*Held*, that the lower Court having presumably omitted to consider important portions of the evidence, the findings arrived at by it ought not to be accepted. *Held*, also, that the finding of the lower Court as to the plaintiffs' claim being barred by limitation, being based on statements without referring to any evidence to establish them, could not be accepted. Case sent back for reconsideration and fresh decision. APPA KALGA NAIK *v.* MALLU.

[I. L. R. 16 Bom. 477

17.—*Finding of the Court of First Instance without reasons given where contrary conclusion has been come to by the District Judge.*] The District Judge having expressed an opinion, and recorded a finding without discussing the several grounds on which the Subordinate Judge came to a contrary conclusion:—*Held*, that the finding of the District Judge ought not to be accepted. MADHAV SHANBHOG *v.* VENKATESH MANJAYA.

[I. L. R. 16 Bom. 540

SPECIAL OR SECOND APPEAL—*contd.*

(4) GROUNDS OF APPEAL—*continued.*

(*a*) QUESTIONS OF FACT—*continued.*

18.—*Decision of Judge not based on evidence given in the case—Finding of fact when binding in second appeal.*] In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (1) that they were permanent tenants; (2) that the plaintiff had no power to enhance; (3) that the enhancement by the plaintiff was unreasonable. The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a "well-known distinction between the *sheri* or private lands of an *inamdar* and the *khata* or *rayatwar* lands held by recognised tenants." The exercise of certain rights of transfer or inheritance, &c., were regarded as evidence of fixity of tenure at a reasonable rent. On second appeal by the plaintiff to the High Court it was argued that the District Court having found, as a fact, that the defendants were permanent tenants bound to pay a reasonable rent, the High Court in second appeal was bound by that finding:—*Held*, that the case should be remanded for proper enquiry. No doubt, if the appeal in the District Court were conducted as if all the facts recorded by the Subordinate Judge were admitted, the plaintiff could not in second appeal question those facts. But it did not appear that it was admitted that the distinction drawn between *sheri* and *khata* tenants was correct, or that every *khata* tenant, as such, exercised the rights described by the Subordinate Judge. Under the circumstances it was clear that the decision of the District Judge was based neither on evidence nor admissions, and was, therefore, not binding in second appeal. VISHVANATH BHIKAJI *v.* DHONDAPPA.

[I. L. R. 17 Bom. 475

19.—*Civil Procedure Code (Act XIV of 1882), ss. 584, 585 — Findings of fact distinguished from inferences or conclusions of law—Inference of law which the facts found were insufficient to justify.*] It is well settled that a Court of Second Appeal, for the purpose of considering the weight of the evidence, is not competent, according to ss. 584 and 585 of the Civil Procedure, Code, to entertain a question as to the soundness of a finding of fact by the Court below. The first Court's decision as to the effect of the evidence must stand final as to the facts. But the soundness of conclusions may involve matter of law and may be questioned by a Court of Second Appeal. A conclusion was drawn by an Appellate Court affirming the judgment of the first Court, that the defendant had accepted as a binding obligation upon him a mortgage executed by his mother, with whom he was a sharer by inheritance in the property charged. A higher Appellate Court, on a second appeal, decided that these conclusions were not warranted by the facts found, and reversed that judgment:—*Held*, that the third Court had not exceeded its powers under the above sections by reversing the decision of the Court below. The expression "specified law" used in cl. (*a*) of

SPECIAL OR SECOND APPEAL—*contd.*

(4) GROUNDS OF APPEAL—*continued.*

(*a*) QUESTIONS OF FACT—*concluded.*

s. 584, first introduced into the Code by the Act of 1877, means "specified in the memorandum or grounds of appeal." *Durga Chowdhrani* v. *Jewahir Singh Chowdhri*, I. L. R. 18 Calc. 23 : L. R. 17 I. A. 122, followed. RAMGOPAL *v.* SHAMSKHATON.

[I. L. R. 20 Calc. 93
[L. R. 19 I. A. 228

(*b*) EVIDENCE, MODE OF DEALING WITH.

20.—*Civil Procedure Code, s.* 584—*Substantial error in a first Appellate Court's finding without any evidence to support it.*] The Court of First Instance dismissed the suit upon the ground that the right, which it was brought to establish, had been taken away by a compromise, entered into by a guardian on behalf of an infant party to former proceedings. This was reversed by the first Appellate Court, which decreed the claim, holding it unaffected by the compromise, on the ground that the latter was, in fact, contrary to the interests of the infant. The High Court, on a second appeal, set aside this finding, there having been no proof that the compromise was to the infant's detriment, and affirmed the decree of the first Court:—*Held*, that the High Court rightly reversed the decree of the first Appellate Court; the above finding, without any evidence to support it, being a substantial error in the proceedings, and good ground of second appeal within the meaning of s. 584, sub-section (*c*), of the Civil Procedure Code. HEMANTA KUMARI DEBI *v.* BROJENDRO KISHORE ROY CHOWDHRY.

[I. L. R. 17 Calc. 875
[L. R. 17 I. A. 65

21.—*Error in legal conclusion or inference from evidence.*] In a suit to enforce a right to share in the profits of a ferry, the defendant set up an exclusive title and adverse possession:—*Held*, that the decision that the defendant's possession had been adverse having been an inference from fact in the Courts below, the correctness of this, as a legal conclusion to be drawn or not, was a question open to second appeal, and the High Court was not precluded from deciding to the contrary. LACHMESWAR SINGH *v.* MANOWAR HOSSEIN.

[I. L. R. 19 Calc. 253
[L. R. 19 I. A. 48

22.—*Error in procedure—Finding of fact by lower Court not accepted by High Court where the District Judge, in consequence of a mistake as to a date, was biassed in dealing with the defendant's evidence.*] Where a Judge, under a mistake, thought that a bond, which was really dated 19th November 1885, was dated 8th November 1886, and consequently treated the deposition of the defendant, in which he stated that the bond had been passed by him a fortnight before he signed in the plaintiff's account book the acknowledgment sued on dated the 10th December 1885, as

SPECIAL OR SECOND APPEAL—*contd.*

(4) GROUNDS OF APPEAL—*concluded.*

(*b*) EVIDENCE, MODE OF DEALING WITH—*concluded.*

"false":—*Held* that, as the Judge must have been biassed by the strong opinion so formed as to the defendant's untruthfulness in dealing with the rest of the defendant's evidence, there was such a substantial error in the procedure as ought to preclude the High Court from accepting the Judge's finding as conclusive upon the point in dispute. Decree reversed, and the case sent back for fresh decision on the merits on the evidence as it stood. *Hemanta Kumari Debi* v. *Brojendro Kishore Roy Chowdry*, I. L. R. 17 Calc. 875 : L. R. 17 I. A. 69, referred to. VIRBHADRAPPA *v.* MAHANTAPPA

[I. L. R. 15 Bom. 670

23.—*Error in dealing with question of admissibility of evidence and burden of proof.*] *Per* MAHMOOD, J.—It is the duty of the Court, when dealing with second appeals and in considering the conclusions at which the lower Appellate Courts have arrived, to consider whether or not those conclusions have been arrived at in due compliance with the rules of law governing the admissibility of evidence, and which involve questions of the burden of proof; especially in cases in which a title is asserted by a plaintiff who seeks to oust a defendant, and that defendant denies the title and asserts that the plaintiff has no title at all. WALI AHMAD KHAN *v.* AJUDHIA KANDU.

[I. L. R. 13 All. 537

24.—*Misconstruction of documents.*] *Per* AIKMAN, J.—*Semble*:—That a ground of appeal to the effect that the lower Appellate Court has misconstrued a document is not one of the grounds of second appeal contemplated by s. 584 of the Code of Civil Procedure. RUDR PRASAD *v.* BAIJNATH.

[I. L. R. 15 All. 367

(5) OTHER ERRORS OF LAW OR PROCEDURE.

(*a*) ISSUES, OMISSION TO DECIDE.

25.—*Suit before Subordinate Judge depending on issues of ownership as well as on a rent-note—Omission by Appellate Court to decide on the question of ownership.*] Where it appeared that an issue was raised as to ownership, and that both parties at the trial before the Subordinate Judge gave evidence on such issue (although the claim was based, in the main, on a rent-note), and the lower Appellate Court omitted to find on such issue:—*Held*, reversing the decrees of the lower Appellate Court, that it ought to have found on the issue as to ownership. RAMKOR GOPALJI *v.* GANGARAM.

[I. L. R. 16 Bom. 545

(*b*) LOCAL INVESTIGATION.

26.—*Disregard of report on local investigation—Disputed boundary — Grounds of appeal — Civil Procedure Code (Act XIV of 1882), s.* 584.] The Court of First Instance accepted as correct a boundary line mapped by an Amin, dividing the

SPECIAL OR SECOND APPEAL—*contd.*

(5) OTHER ERRORS OF LAW OR PROCEDURE —*concluded.*

(*b*) LOCAL INVESTIGATION—*concluded.*

estates of the opposite parties. The lower Appellate Court, after remanding the suit for a second local investigation and report, determined to disregard the second return, which differed from the first, and affirmed the judgment. Both parties having appealed, the High Court, dissatisfied as to this disregard of the second return, decided to hear the appeal as as a regular one, examined the evidence, and reversed the judgment of the Court below:—*Held*, by the Privy Council, that to have dealt with the appeal as a regular appeal was in excess of the Court's jurisdiction; and that it had no power to hear the appeal as a second appeal, there not having been, in the proceedings below, any error or defect, within the meaning of s. 584 of the Civil Procedure Code, which contained the only grounds of second appeal. LUKHI NARAIN JAGADEB *v.* JODU NATH DEO.

[I. L. R. 21 Calc. 504

(*c*) WITNESSES.

27.—*Adjournment for attendance of witnesses—Civil Procedure Code (Act XIV of 1882), s. 156—Discretion, exercise of—Witnesses, attendance of—Power of High Court on second appeal.*] On the day fixed for the hearing of a suit, the defendant applied for process against certain of his witnesses who had been summoned, but who had failed to attend, asking for an adjournment to obtain their attendance. This application was refused, and the case was proceeded with. The plaintiffs' evidence was recorded and that of one of the defendants; the defendants being unable to produce further evidence, the Court recorded that the case was closed, and that judgment would be delivered on the following day, the 31st December. On the day following the defendants produced certain witnesses and asked that they might be examined. This application was rejected, and judgment was subsequently delivered in favour of the plaintiffs:—*Held per* PETHERAM, C.J.—That the omission to examine the defendants' witnesses on the 31st December, was a substantial error in procedure, and that the Munsif had therefore exercised his discretion wrongfully. *Per* GHOSE, J.—That although there was some doubt whether the Court on second appeal could interfere in a point of discretion, yet this doubt was not strong enough to justify an expression of opinion contrary to that arrived at by the Chief Justice. MONI LAL BANDOPADHYA *v.* KHIRODA DASI.

[I. L. R. 20 Calc. 740

See TAYLOR *v.* SARAT CHUNDER ROY CHOWDHRY.

[I. L. R. 20 Calc. 745 note

(6) PROCEDURE IN SPECIAL APPEAL.

28.—*Practice—Procedure—Defective judgment of Appellate Court, reversing Munsif's decision on credibility of witnesses—Judgment, form of.*] Case in which the High Court on special appeal, being

SPECIAL OR SECOND APPEAL—*contd.*

(6) PROCEDURE IN SPECIAL APPEAL—*continued.*

of opinion that the judgment of the District Judge reversing that of the Munsif on the credibility of the witnesses did not fulfil the conditions that a judgment reversing such a decision ought to fulfil, brought up the case before itself and heard it as a regular appeal. PURMESHUR CHOWDHRY *v.* BRIJOLALL CHOWDHRY.

[I. L. R. 17 Calc 256

29.—*Powers of Appellate Court—Question of fact—Civil Procedure Code, 1882, ss. 584, 585.*] The limitation to the power of the Appellate Court in hearing a second appeal under ss. 584 and 585 of the Code of Civil of Procedure, 1882, must be attended to, and the appellant cannot be allowed to question the finding of the first Appellate Court on a question of fact. PERTAP CHUNDER GHOSE *v.* MOHENDRANATH PURKAIT.

[I. L. R. 17 Calc. 291
[L. R. 16 I. A. 233

30.—*Appeal to Chief Court, Punjab — Civil Procedure Code, 1882, s. 584—Questions of fact.*] An appeal from an Appellate Court to the Chief Court of the Punjab is not limited, as such appeals are under the Civil Procedure Code, 1882, s 584; but evidence may be dealt with, and questions of fact are open for decision. BUDHA MAL *v.* BHAGWAN DAS.

[I. L. R. 18 Calc. 302

31.—*Plea raised at the hearing which was not taken in the memorandum of appeal—Question of limitation—Practice.*] A plea that the memorandum of appeal in the lower Appellate Court was insufficiently stamped, and that such deficiency was not made good within the period of limitation, is not a plea which can be raised at the hearing of a second appeal, when it has not been taken in the memorandum of appeal. RAM KISHEN UPADHIA *v.* DIPA UPADHIA.

[I. L. R. 13 All. 580

32.—*Objection taken for first time in special appeal.*] Where in a suit under the Madras Local Boards Act in the Courts of First Instance and First Appeal no objection was taken to the frame of the suit with reference to the provisions of s. 27:—*Held*, that the defendants should not be permitted on second appeal to raise such objection to the frame of the *suit*. PRESIDENT, TALUK BOARD, SIVAGANGA *v.* NARAYANAN.

[I. L. R. 16 Mad. 317

33.—*New point raised in second appeal—Question of law.*] The High Court will allow, on second appeal, a new point to be raised for the first time, provided it is purely a question of law arising on the findings of the Courts below, and not affected by any facts outside those findings. NAGESH *v.* GURURAO.

[I. L. R. 17 Bom. 303

SPECIAL OR SECOND APPEAL—*concld.*

(6) PROCEDURE IN SPECIAL APPEAL—*concluded.*

34.—*Civil Procedure Code, ss.* 562, 591—*Objection to previous order in the case to be taken in memorandum of appeal.*] Unless such objection is taken in his memorandum of appeal, it is not open to an appellant at the hearing of an appeal from the decree to question the validity of an order of remand previously made in the case under s. 562 of the Code of Civil Procedure. TILAK RAJ SINGH *v.* CHAKARDHARI SINGH.

[I. L. R. 15 All. 119

35.—*Civil Procedure Code, ss.* 541, 542, 584, 585, 587—*Question of limitation—Plea of limitation as to first Appellate Court taken orally on second appeal.*] An appellant in a second appeal raised orally at the hearing a plea not taken in his memorandum of appeal to the effect that the respondents' appeal to the lower Court (where they had been appellants) had been barred by limitation when it was presented:—*Held* that, even though the plea proposed to be raised was one involving a question of limitation, the appellant was not entitled as of right to be heard in support of it without the leave of the Court granted under s. 542 of the Code of Civil Procedure; and that the Court was not itself bound to consider that plea, and under the circumstances did not think it necessary to enter into it. *Ram Kishen Upadhia* v. *Dipa Upadhia*, I. L. R. 13 All. 580, approved. AHMAD ALI *v.* WARIS HUSAIN.

[I. L. R. 15 All. 123

36.—*Civil Procedure Code, s.* 562—*Second appeal from order of remand—Effect of findings of facts and findings of law.*] On an appeal from an order of remand under s. 562 of the Code of Civil Procedure, the High Court is bound to except the findings of fact of the Court which made the remand, that Court being a Court of First Appeal, provided that there is evidence to support them; but where the High Court has decided a question of law in an appeal from an order under s. 562 of the Code, that decision of the question of law will be final for all purposes in the suit and in any appeal which may subsequently be made to the High Court. *Deo Kishen* v. *Bansi*, I. L. R. 8 All. 172, referred to. GAURI SHANKAR *v.* KARIMA BIBI.

[I. L. R. 15 All. 413

SPECIFIC PERFORMANCE. *Col.*

1. Specific Performance Allowed ... 1052

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.

[I. L. R. 14 Mad. 18

See MINOR—RIGHT TO ENFORCE CONTRACTS.

[I. L. R. 20 Calc. 508

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[I. L. R. 17 Calc. 919

SPECIFIC PERFORMANCE—*continued.*

——, Suit for—

See JURISDICTION—SUITS FOR LAND.

[I. L. R. 19 Calc. 358

[I. L. R. 14 Bom. 353

See REGISTRATION ACT, s. 48.

[I. L. R. 13 Mad. 324

See REGISTRATION ACT, s. 49.

[I. L. R. 13 Mad. 308

[I. L. R. 14 Mad. 55

See VENDOR AND PURCHASER—TITLE.

[I. L. R. 15 Bom. 657

(1) SPECIFIC PERFORMANCE ALLOWED.

1.—*Contract—Disability to contract—Temporary disability of zemindar to contract, his estate being subject to the provisions of Act VI of* 1876 (*Chutia Nagpore Encumbered Estates Act*), *amended by Act V of* 1884—*Effect of continuance of transactions after the release of his estate from management under that Act.*] It is competent to a person, who has been, but is no longer, in a state of disability, to take up and carry on transactions commenced while he was under disability, in such a way as to bind himself as to the whole. He may be bound by a contract, of which the terms are to be ascertained by what passed whilst he was disabled from contracting. The defendant's ancestral zemindari was placed under management by an order made under s. 2 of Act VI of 1876, and he became incapable of contracting in reference to it. He, however, agreed with the plaintiff that the latter should advance money on mortgage, and take a lease of part of the estate. Afterwards by an order, whether well founded or not, at all events effectively made, under s. 12 as amended by Act V of 1884, he was restored to the possession of his estate, again acquiring the right to contract about it. He carried on the transaction with the plaintiff, retaining the benefit of money paid by him, but in the end not completing:—*Held*, that he was bound by the contract, though its terms were to be ascertained by what had passed while he was disabled from contracting, and that specific performance could be decreed against him. Whether his entering into the contract was against the policy of the Act, and whether the order under s. 12 had, or had not, been made on good grounds, did not affect the question. GREGSON *v.* UDOY ADITYA DEB.

[I. L. R. 17 Calc. 223

[L. R. 16 I. A. 221

2.—*Transfer of Property Act*, 1882, *s.* 83—*Civil Procedure Code, s.* 375.] A sum of money having been deposited in Court under the Transfer of Property Act, s. 83, by a vendee of the mortgagor, the mortgagee refused to accept it in discharge of his mortgage except on the terms that the depositor should convey to him part of the mortgaged premises, which he consented to do. This agreement

SPECIFIC PERFORMANCE—*concluded.*

(1) SPECIFIC PERFORMANCE ALLOWED—*concluded.*

was not communicated to the Court, and the depositor refused to carry it out when the mortgagee had withdrawn the money as above:—*Held*, that the mortgagee was entitled to a decree for specific performance of the agreement to convey. TATAYYA *v.* PICHAYYA.

[I. L. R. 13 Mad. 316

3.—*Reversionary interest, sale of—Purchase-money less than market value of reversion—Stat.* 31 *Vict. c.* 4—*Inadequate consideration.*] The rule observed in England until the passing of Stat. 31 Vict. c. 4, that specific performance of an agreement to sell a reversionary interest should not be decreed where the purchase-money was less than the market value of the reversion:—*Held*, not to be the rule in India. GITABAI *v.* BALAJI KESHAV SHASTRI NAGARKAR.

[I. L. R. 17 Bom. 232

SPECIFIC RELIEF ACT (I OF 1877).

——, s. 9.

See POSSESSION—NATURE OF POSSESSION.

[I. L. R. 15 Bom. 238

See STATUTES, CONSTRUCTION OF.

[I. L. R. 19 Calc. 544

1.—s. 9.—*Previous possession—Dispossession.*] Mere previous possession will not entitle a plaintiff to a decree for the recovery of possession except in a suit under s. 9 of the Specific Relief Act, 1877, which must be brought within six months from the date of dispossession. *Khajah Enaetollah Chowdhry* v. *Kishen Soondur Surma*, 8 W. R. 389; *Ertaza Hossein* v. *Bany Mistry*, I. L. R. 9 Calc. 130; *Debi Churn Boido* v. *Issur Chunder Manjee*, I. L. R. 9 Calc. 39; *Kawa Manjee v. Khowaz Nussio*, 5 C L. R. 278; *Wise* v. *Ameerunnissa Khatoon*, L. R. 7 I. A. 73; *Krishnarav Yashvant* v. *Vasudev Apaji Ghotikar*, I. L. R. Bom. 371; *Pemraj Bhavaniram* v. *Narayan Shivaram Khisti*, I. L. R. 6 Bom. 215; *Mohabeer Pershad* v. *Mohabeer Singh*, I. L. R. 7 Calc. 591: 9 C. L. R. 164, referred to and explained. PURMESHUR CHOWDHRY *v.* BRIJOLALL CHOWDHRY.

[I. L. R. 17 Calc. 256

2.—s. 9.—*Right of fishery—Suit for possession of right to fish in a khal.*] A suit for the possession of a right to fish in a *khal*, the soil of which belongs to another, does not come within the provisions of s. 9 of the Specific Relief Act, 1877. NATABAR PARUE *v.* KUBIR PARUE.

[I. L. R. 18 Calc. 80

3.—s. 9.—*Immoveable property—Right of fishery—Possession, suit for.*] *Held* by the Full Bench (PRINSEP and PIGOT, JJ., dissenting).—A suit for the possession of a right to fish in a *khal*, the soil of which does not belong to the plaintiff, does not come within the provisions of s. 9 of the Specific Relief Act. FADU JHALA *v.* GOUR MOHUN JHALA.

[I. L. R. 19 Calc. 544

SPECIFIC RELIEF ACT (I OF 1877), s. 9—*concluded.*

4.—s. 9.—*Immoveable property — Right o ferry.*] A right of ferry is immoveable property or an interest therein within the meaning of the Specific Relief Act, s. 9. KRISHNA *v.* AKILANDA.

[I. L. R. 13 Mad. 54

5.—s. 9.—*Mamlatdars Courts Act* (*Bombay Act III of* 1876)—*Suit by a trespasser to recover possession.*] A trespasser, who has been dispossessed, is not entitled to bring a suit under s. 9 of the Specific Relief Act (I of 1877) or under Bombay Act III of 1876 to recover possession. *Dadabhai Narsidas* v. *The Sub-Collector of Broach*, 7 Bom. H. C. Rep. 82, A. C. J; *Krishnarav Yashavant* v. *Vasudev Apaji Ghotikar*, I. L. R. 8 Bom. 371, and *Virjivandas Madhavdas* v. *Mahomed Alikhan Ibrahimkhan*, I. L. R. 5 Bom. 208, referred to. AMIRUDIN *v.* MAHAMAD JAMAL.

[I. L. R. 15 Bom. 685

6.—s. 9.—*Possession, suit for—Suit in ejectment on a possessory title.*] *Per* EDGE, C. J., STRAIGHT and TYRRELL, JJ, (MAHMOOD, J., *dissentiente*).—Section 9 of the Specific Relief Act is intended to provide a special summary remedy for a person who, being, whatever his title, in possession of immoveable property, is ousted therefrom. That section does not debar a person who has been ousted by a trespasser from the possession of immoveable property to which he has merely a possessory title from bringing a suit in ejectment on his possessory title after the lapse of six months from the date of his dispossession. *Davison* v. *Gent*, 26 L. J. Exch. 122; *Asher* v. *Whitlock*, L. R. 1 Q. B. 1; *Wise* v. *Ameer-un-nissa Khatoon*, L. R. 7 I. A. 73; *Pemraj Bhabaniram* v. *Narayan Shivaram Khisti*, I. L. R. 6 Bom. 215; *Krishnarav Yashvant* v. *Vasudev Apaji Ghotikar*, I. L. R. 8 Bom. 371; and *Muhammad Yusuf* v. *Sukh Nath*, Weekly Notes, 1887, p. 55, referred to. *Per* MAHMOOD, J.—A person who is suing upon a merely possessory title to recover possession of immoveable property against a person who has ousted him, must bring his suit, if at all, under s. 9 of Act I 1877, and therefore within six months from the date of his dispossession. WALI AHMAD KHAN *v.* AJUDHIA KANDU.

[I. L. R. 13 All. 537

7.—s. 9.—*Suit or possession of land by person wrongfully ejected—Joinder of other claims.*] A Court should in all cases in which it applies give effect to the provisions of the first paragraph of s. 9 of the Specific Relief Act, 1877, whether that section is expressly pleaded or not. There is nothing to prevent a claim for damages and a claim for establishment of title being joined with a claim for the relief provided for by the above-mentioned section. RAM HARAKH RAI *v.* SHEODIHAL JOTI.

[I. L. R. 15 All. 384

——, s. 18 (a).

See VENDOR AND PURCHASER—MISCELLANEOUS CASES.

[I. L. R. 14 Mad. 459

SPECIFIC RELIFF ACT (I OF 1877)—*continued.*

——, ss. 20, 21.

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.

[I. L. R. 14 Mad. 18

——, s. 25.

See VENDOR AND PURCHASER—TITLE.

[I. L. R. 15 Bom. 657

——, ss. 31, 34.

See CONTRACT — BOUGHT AND SOLD NOTES.

[I. L. R. 20 Calc. 854

——, s. 39.

See ONUS PROBANDI—DEEDS AND OTHER DOCUMENTS—SUITS TO ENFORCE OR SET ASIDE.

[I. L. R. 12 All. 523

——, s. 42.

See CASES UNDER DECLARATORY DECREE, SUIT FOR.

See PARTIES—SUIT BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

[I. L. R. 15 Bom. 309

——, s. 45.

See COMPANY — TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

[I. L. R. 16 Bom. 398

——, s. 45—*Chairman of Calcutta Municipality, discretion of, as to list of candidates and votes at elections.*] Instances of applications under s. 45 of the Specific Relief Act for rules against the Chairman of the Calcutta Municipality with regard to the list of candidates for and the votes given at municipal elections. IN THE MATTER OF MUTTY LALL GHOSE.

[I. L. R. 19 Calc. 192

IN THE MATTER OF RAJENDRA LALL MITTRA.

[I. L. R. 19 Calc. 195 note

IN THE MATTER OF THE ELECTION OF MUNICIPAL COMMISSIONERS FOR WARD NO. 10, CALCUTTA.

[I. L. R. 19 Calc. 198

——, s. 54.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY.

[I. L. R. 12 All. 436

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY—ERECTION OF BUILDINGS.

[I. L. R. 16 Mad. 407

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

[I. L. R. 15 Bom. 309

SPECIFIC RELIEF ACT (I OF 1877)—*concluded.*

——, s. 56.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.

[I. L. R. 14 Mad. 425

——, s. 57.

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.

[I. L. R. 14 Mad. 18

STAMP.

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1. Madras Regulation II of 1825 ... 1056

——, Deficiency in—

See LIMITATION ACT, 1877, s. 4.

[I. L. R. 19 Calc. 747, 780
[I. L. R. 15 Mad. 78
[I. L. R. 12 All. 129
[I. L. R. 15 All. 65
[I. L. R. 20 Calc. 41

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—RE-HEARING OF SUIT.

[I. L. R. 18 Calc. 445

See SPECIAL APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R. 13 All. 580

(1) MADRAS REGULATION II OF 1825.

——, s. 4.—*Deed transferring property conditionally—Ad valorem stamp duty.*] An instrument, dated 1853, which purported to be a transfer by the executant of the property inherited by her from her husband subject to the payment of his debts, and in which a provision was made for the maintenance of the executant and for the retransfer of the property in case she gave birth to a son:—*Held*, not to be liable to stamp duty. REFERENCE UNDER STAMP ACT, s. 49.

[I. L. R. 16 Mad. 419

STAMP ACT (I OF 1879).

——, s. 3.

See PROMISSORY NOTE—FORM.

[I. L. R. 16 Mad. 283

1.—s. 3, cl. 4.—*Bond—Contract for personal service.*] The defendant signed an agreement in England with a Railway Company whereby he contracted to serve the Company exclusively for four years in India under a penalty of £100. The defendant having come to India at the expense of the Company and served it for two years, left its service for that of another employer, alleging that he had not been fairly treated by a locomotive superintendent:—*Held*, that the instrument executed by the defendant was an agreement merely and did not require to be stamped as a bond. MADRAS RAILWAY CO. *v.* RUST.

[I. L. R. 14 Mad. 18

STAMP ACT (I OF 1879), s. 3—*continued.*

2.—s. 3, cl. 4—*Bond.*] *R* executed a document, by which he promised to pay on demand Rs. 10-12-0 with interest to *S R.* The writer of the document and some others signed the document as witnesses:—*Held*, that the document was a bond and liable to stamp duty as such. REFERENCE UNDER STAMP ACT, s. 49.

[I. L. R. 13 Mad. 147

3.—s. 3, cl. 4.—*Khata in the name of the debtor, but in the handwriting of another—Bond—Acknowledgment.*] *A khata* in the name of a debtor acknowledging the receipt of the amount advanced, and bearing the signature of the writer of the *khata* as writer of it merely:—*Held*, to be an acknowledgment only, and not a bond, within the meaning of s. 3, cl. 4 (*b*) of the Stamp Act (I of 1879). DULABH VANMALI *v.* REHMAN JAMAL.

[I. L. R. 14 Bom. 511

4.—s. 3, cl. 4, and Sch. I, Art. 13.—*Bond—Attestation.*] A Company agreed to pay £220,000 in five instalments for the cost of constructing a railway, on the terms, among others, that debentures on the railway should be handed over to the Company on each payment being made, and that, in the event of the other party failing to perform his liabilities as to the construction of the railway, the Company should be entitled to sell the debentures, and also to recover damages, and also to discontinue payments of the above instalments. It was also provided that the Company should be at liberty to retain £40,000 as compensation for risk, expenses, &c. The agreement was sealed with the seal of the Company in the presence of two Directors and the Secretary:—*Held*, that the instrument was liable to stamp duty as a bond for £220,000 under Act I of 1879. REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R. 15 Mad. 193

5.—s. 3, cl. 6.—*Order for payment of money on a person not a banker.*] The plaintiff agreed to lend money to the defendant for payment of his trade debts, &c. In pursuance of the agreement the defendant gave his creditors "*chits*" for certain sums. These "*chits*" were addressed to the plaintiff and requested him to pay the amounts mentioned therein. He did so, and then sued for the amount advanced. It was contended by the defendant that the "*chits*" being cheques or bills of exchange were inadmissible in evidence, because unstamped. The Court found that by the agreement the plaintiff was not constituted the defendant's banker within the meaning of cl. (6), s. 3 of the Stamp Act, 1879:—*Held*, that the "*chits*" did not require a stamp. RATULAL RANGILDAS *v.* VRIJBHUKHAN PARABHURAM.

[I. L. R. 17 Bom. 684

6.—s. 3, cl. 10.—*Instruments "duly stamped"—Rule 5 (b) of the rules made by the Governor-General in Council under Notification No.* 1288 *of 3rd March* 1882.] The absence of the certificate required by Rule 5 (*b*) of the rules, dated 3rd March 1882, issued by the Governor-General in Council, under ss. 9, 15, 17, 32, 51 and 56 of the Stamp Act (I of 1879), does not make the document in question not "duly stamped" within the intention of the Stamp Act. QUEEN-EMPRESS *v.* TRAILAKYA NATH BARAL.

[I. L. R. 18 Calc. 39

7.—s. 3, cl. 10.—*Promissory note not chargeable with duty of* 6, 10 *or* 12 *annas—Such promissory note written on impressed sheet of proper value bearing the word "hundi"—Note duly stamped—Rules by Governor-General in Council, under s.* 9 *of Stamp Act—Notification No.* 1288 *of* 3*rd March* 1882, *Rules* 3, 4, 6—*Notification No.* 2955 *of* 1*st December* 1882, *Rule* 6 *A.*] The effect of Notification No. 2955 of the 1st December 1882, amending the rules made by the Governor-General in Council under s. 9 of the Stamp Act (I of 1879) and published in Notification No. 1288 of the 3rd March 1882, is not to prohibit all promissory notes except those chargeable with a duty of 6, 10 or 12 annas being written on impressed sheets bearing the word "*hundi.*" A rule which says that certain promissory notes shall be written on impressed sheets bearing the word "*hundi*," cannot be interpreted as enacting that other promissory notes shall not be written on impressed paper of the proper value if it happens to bear the word "*hundi.*" A promissory note for an amount not exceeding Rs. 200, payable otherwise than on demand, but not more than one year after date, and requiring a stamp of two annas, is duly stamped if written on an impressed sheet of the value of two annas, though that impressed sheet bears the word "*hundi.*" RADHA BAI *v.* NATHU RAM.

[I. L. R. 13 All. 66

8.—s. 3, cl. 10, and s. 34.—*Rules* 4 *and* 6 *of rules made under s.* 9 *of the Stamp Act—Promissory note—Hundi stamp.*] In a suit on a promissory note for Rs. 4,300, which was executed on an impressed sheet bearing an impressed stamp with the word "*hundi*" at the top and the words "three rupees" at the bottom of the impression:—*Held*, that with reference to Rules 4 and 6 of the rules made under s. 9 of the Stamp Act and dated 3rd March 1882 and 1st December 1882 the instrument was "duly stamped" as to the amount of duty, and was admissible in evidence. BANK OF MADRAS *v.* SUBBARAYALU.

[I. L. R. 14 Mad. 32

9.—s. 3, cl. 11.—*Award of arbitrators for division of family property—Written agreement to effect division according to the terms of the award, effect of—Division of the property in severalty—Partition deed.*] The co-sharers in an undivided Hindu family having under a written instrument agreed to divide the family property according to the terms of the award passed by the arbitrators:—*Held*, that the instrument was an agreement to divide the property in severalty, and was, therefore, a partition deed within the definition in cl. 11 of s. 3 of the General Stamp Act (I of 1879). IN RE VASANJI HARIBHAI.

[I. L. R. 15 Bom. 677

STAMP ACT (I OF 1879), s. 3—*concluded.*

10.—s. 3, cl. 11, and s. 29 (e).—*Instrument of partition.*] Three out of seven brothers, constituting an undivided Hindu family, executed documents whereby each acknowledged the receipt of certain property made over to him, "a division of family property having been effected," and acknowledged himself liable for one-seventh of the debts of the family. One of the documents contained a clause to the effect that the executant had no further claim on property of the family:—*Held*, that the documents should be stamped as instruments of partition, each member paying according to the share taken by him under the partition. REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R. 15 Mad. 164

11.—s. 3, cl. 15, and s. 25.—*Policy of Insurance—Uncovenanted Service Family Pension Fund, stamp on entrance certificate of.*] An entrance certificate granted under the rules of the Uncovenanted Service Family Pension Fund is a life-policy within s. 3 (15) of the Stamp Act for an amount not exceeding Rs. 1,000, and is therefore chargeable with a duty of 6 annas. Such an instrument is not within the scope of s. 25 (*c*) of the Stamp Act. REFERENCE UNDER STAMP ACT, 1879, s. 46.

[I. L. R. 19 Calc. 499

——, s. 13 and s. 34.—*Money-bond—Endorsement of transfer.*] The endorsement of transfer written on a simple money-bond duly stamped requires a stamp, and can be stamped under s. 34 of the Stamp Act. PRALHAD LAKSHMANRAV *v.* VITHU.

[I. L. R. 17 Bom. 687

——, s. 17.

See s. 34.

[I. L. R. 14 Mad. 255

1.—s. 24.—*Conveyance—Consideration—Agreement to pay assessment until transfer is made in Collector's books—Relinquishment of title by mortgagor in favour of mortgagee.*] Where under an instrument a mortgagor relinquished his title to the mortgaged property in favour of the mortgagee and also agreed to pay the Government assessment until the transfer of the land to the name of the mortgagee-purchaser in the Collector's books:—*Held*, that such an instrument was a conveyance of which the amount of the consideration calculated according to s. 24 of the General Stamp Act (I of 1879) was the original mortgage amount *plus* the amount mentioned in the instrument. *Held* also, that the instrument was an agreement to pay assessment until the land conveyed was transferred in the Collector's books, and as such should bear the additional stamp for an agreement, namely eight annas. SINAPAYA *v.* SHIVAPA.

[I. L. R. 15 Bom. 675

2.—s. 24, and Sch. I, Arts. 16 and 21.—*Mortgage lien—Certificate of sale—Sale in execution of decree.*] Where property is sold at a Court-sale subject to a mortgage lien, the stamp upon

STAMP ACT (I OF 1879), s. 24—*concluded.*

the certificate of sale should cover the amount for which the property was sold, as well as the amount of the mortgage lien reserved. *Nagindas Jeychand* v. *Halalkhore Nathwa Gheesla*, I. L. R. 5 Bom. 470, followed. KAISUR KHAN MURAD KHAN *v.* EBRAHIM KHAN MUSA KHAN.

[I. L. R. 15 Bom. 532

——, s. 25.

See s. 3, CL. 15.

[I. L. R. 19 Calc. 499

——, s. 29 (*e*).

See s. 3, CL. 11.

[I. L. R. 15 Mad. 164

——, s. 31.

See DEBTOR AND CREDITOR.

[I. L. R. 16 Mad. 85

——, s. 33.

See s. 34.

[I. L. R. 14 Mad. 255

——, s. 34.

See s. 13.

[I. L. R. 17 Bom. 687

See SCH. I, ART. 46.

[I. L. R. 14 Bom. 102

——, s. 34, and ss. 17 and 33.—*Act XXXVI of* 1860, *s.* 13—*Act X of* 1862, *s.* 15—*Unstamped document executed in* 1862 *out of British India—Penalty.*] A document comprising an assignment of the executant's interest under a will, and also a power-of-attorney, was executed on 26th May 1862 in Australia and was received in Madras on 22nd June 1862 when the Stamp Act (X of 1862) was in force which contained no provision for stamping such a document executed out of British India. It was sought in 1890 to use the document in Madras, but it was not stamped:—*Held*, that no penalty could be levied upon it under the Stamp Act of 1879. REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R. 14 Mad. 255

——, s. 50.—*Collector, power of—Reference to High Court—Decision of Provincial Small Cause Court admitting insufficiently stamped document in evidence.*] *Semble*:—A Collector is entitled under s. 50 of the Stamp Act to refer to the High Court the decision of a Provincial Small Cause Court admitting in evidence an insufficiently stamped instrument on payment of duty and a penalty. REFERENCE UNDER STAMP ACT, s. 50.

[I. L. R. 15 Mad. 259

——, s. 51 (d), (6).—*Mortgage-deed stamped but not used.*] A mortgage-deed, which provided for the transfer of possession of the mortgaged premises, was executed to secure the repayment of money to be advanced for the discharge of certain debts owing by the executants. The instrument was stamped but not registered; and

STAMP ACT (I OF 1879). s. 51—*concld.*

on its appearing that the amount of the debts in question exceeded the sum named, the intended mortgagee refused to carry out the transaction, and the executants executed a deed of conditional sale of the same premises in favour of another:—*Held*, that the stamp duty paid on the mortgage could be refunded under Stamp Act (I of 1879), s. 5 (*d*), (6). REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R. 16 Mad. 459

———, s. 61.—*Offence under Stamp Act—Omission of treasury officer to give certificate required by Rule* 5 (*b*) *of the rules made by the Governor-General in Council under notification* 1288 *of 3rd March* 1882.] The non-compliance by the treasury officer or the stamp vendor with the direction to give the certificate required by Rule 5 (*b*) of the rules dated 3rd March 1882 issued by the Governor-General in Council under ss. 9, 15, 17, 32, 51 and 56 of the Stamp Act is not an act for which the person purchasing the stamp from him can be punished, by the invalidation of the stamp innocently bought by him, or under s. 61 of the Stamp Act. QUEEN-EMPRESS *v.* TRAILAKYA NATH BARAL.

[I. L. R. 18 Calc. 39

———, Sch. I, Art 1.—*Acknowledgment of debt—Limitation Act* (*XV of* 1877), *s.* 19—*Intention.*] The question whether or not an allusion to a debt contained in a letter from a debtor to his creditor amounts to an acknowledgment of the debt within the meaning of Art. I, Sch. I, of the Stamp Act, 1879, is a question in each case of the intention of the writer. Hence, where such a letter, written *ante litem motam*, before limitation in respect of the debt had expired, and at a time when other evidence of the debt was subsisting, was tendered in evidence as an acknowledment of the debt for the purpose of saving limitation under the provisions of s. 19 of the Limitation Act, 1877:—*Held*, that the said letter was not inadmissible in evidence by reason of its not having been stamped. BISHAMBAR NATH *v.* NAND KISHORE.

[I. L. R. 15 All. 56

———, Sch. I, Art. 4.—*Agreement to lease—Correspondence containing agreement to lease—Complete agreement.*] Certain correspondence passed between the plaintiff and defendant relating to the lease of a flat in premises in occupation of the plaintiff, which admittedly contained an agreement for a lease for one year, with an option of renewal for another year. The terms in which the option was given were as follows:—The defendant in one letter wrote: "So I expect you will give me the option of renewal for another year, respectively five months on the same terms." To which the plaintiff replied: "You may have the option of retaining it (the flat) for another year on the same terms, but not for a shorter period." In pursuance of an arrangement, the defendant had a draft lease prepared embodying the terms agreed on, which he sent to the plaintiff for approval, and which was in due course returned by him "approved." The defendant then had the lease

STAMP ACT (I OF 1879), Sch. I, Art. 4—*concluded.*

engrossed and properly stamped, but the plaintiff eventually refused to execute it, and it was never signed by the defendant. The option of renewal was given in the unexecuted lease in the following terms:—"Also with option to renew for another twelve months certain." The defendant having entered into possession, and disputes having arisen, the plaintiff gave him notice to quit, and sued to eject him, alleging that at the most he was a mere monthly tenant. The defendant pleaded that under the lease he was entitled to hold for a year. The year expired before the suit came on to be heard, and the defendant not having exercised the option to renew vacated the premises. At the hearing the defendant, in support of his case, tendered the correspondence and the stamped unexecuted lease. It was objected that the correspondence was inadmissible in evidence because it was unstamped, and on behalf of the defendant it was argued that the stamped unexecuted lease must be treated as part of the correspondence, and as it was properly stamped, no further stamp was necessary:—*Held*, that as the correspondence contained a complete agreement independently of the draft and engrossed lease, the latter could not be treated as part of the correspondence, and that, consequently, the correspondence must be stamped and the penalty paid before it could be admitted in evidence. BOYD *v.* KREIG.

[I. L. R. 17 Calc. 548

1.—Sch. I, Art. 5.—*Agreement or memorandum of agreement relating to the sale of shares—Agreement by correspondence.*] Correspondence having passed between the plaintiff and defendant relating to the sale of shares in a certain company by the plaintiff to the defendant, and the sale not having been carried out, the plaintiff in a suit for damages against the defendant sought to prove an agreement for sale from the letters, none of which were stamped:—*Held*, that the letters, though unstamped, were admissible as evidence of an agreement, since they did not constitute an agreement or a memorandum of agreement. RAINIER *v.* GOULD.

[I. L. R. 13 Mad. 255

2.—Sch. I, Art 5.—*Agreement—Document acknowledging receipt of money for future sale of shares of a company and promising to execute a pukka document of sale.*] A document whereby the party executing it purported to sell his right, title and interest in certain receipts for shares, and to execute in future a *pukka* document of sale thereof, and acknowledged the receipt of Rs. 10,001, *held* to be an agreement, and, as such, liable to a stamp duty of eight annas under Sch. I, Art. 5 of the Stamp Act (I of 1879), the property in the receipt not being intended to pass forthwith. HEPTULA SHEKH ADAM AND CO. *v.* ESAFALI ABDULALI.

[I. L. R. 14 Bom. 316

3.—Sch. I, Art. 5, and Art. 44.—*Mortgage—"Agreement not otherwise provided for."*] A license issued to an arrack renter expressly

STAMP ACT (I OF 1879), Sch. I, Art. 5—*concluded.*

required as one of its conditions that the licensee should deposit a sum equal to three months' rental as a security for the due performance of the contract. The licensee executed a *muchalka*, stating that he agreed to all the terms and conditions mentioned in the license:—*Held*, that the *muchalka* ought to be stamped with an eight-anna stamp. REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R. 15 Mad. 134

———, Sch. I, Art. 13.

See s. 3, ART. 4.

[I. L. R. 15 Mad. 193

See SCH. I, ART. 54.

[I. L. R. 15 Mad. 259

———, Sch. I, Art. 16.—*Sale-certificate—Sale subject to incumbrance.*] Where property subject to an incumbrance is sold by auction in execution of a decree, the sale-certificate should be stamped according to the amount of the purchase-money, and not according to the amount of the purchase-money together with the incumbrance. JWALA PRASAD *v.* RAM NARAIN.

[I. L. R. 15 All. 107

———, Sch. I, Art 22.—*Civil Procedure Code (Act XIV of* 1882), *s.* 62—*Copy of a document filed with the plaint—Attestation by the Court or its officer.*] Article 22 of Sch. I of the General Stamp Act (I of 1879) does not apply to a copy contemplated by s. 62 of the Civil Procedure Code (Act XIV of 1882), the attestation of which copy by the Court or its officer being not made on the application of the owner of the copy, but solely in consequence of the express direction of the Code, with a view to its being filed for the purpose of identifying the book entry when produced at the hearing. KRISHNAJI SADASHIV RANADE *v.* DULABA.

[I. L. R. 15 Bom. 687

———, Sch. I, Art. 29.

See SCH. I, ART. 44.

[I. L. R. 21 Calc. 241

———, Sch. I., Art. 44.

See SCH. I., ART. 5.

[I. L. R. 15 Mad. 134

———, Sch. I, Art. 44 (b), and Art. 29.—*Mortgage advance payable on demand—Power of sale in default of repayment of advance—Pledge.*] In consideration of an advance of Rs. 1,450, on interest, repayable on demand, certain boat-owners assigned to *S & Co.* their paddy boats, the boat-owners retaining working and being responsible for the safety of the boats, and agreeing, so long as the sum advanced with interest should remain unpaid, to use their boats for the sole purpose of supplying paddy to *S & Co.*, and to deliver such paddy (which was to be paid for at the market rate) at the end of each trip as directed by *S & Co.* On failure to make

STAMP ACT (I OF 1879), Sch. I, Art. 44—*concluded.*

repayment on demand, *S & Co.* were empowered to take possession and to sell the boats:—*Held*, that the document was a mortgage and not a pledge, and as such should be stamped under Art. 44 (*b*) of Sch. I of the Stamp Act of 1879. IN THE MATTER OF KO SHWAY AUNG *v.* STRANG STEEL AND CO.

[I. L. R. 21 Calc. 241

———, Sch. I, Art. 46, and s. 34, and Sch. II, cl. 2.—*Agreements for sale of goods—Broker's bought and sold notes—Note or memorandum of sale.*] The plaintiffs sued to recover damages for the non-acceptance of wheat which the defendant on the 16th May 1889 by two contracts agreed to purchase. At the hearing, in order to prove the terms of the contracts, the plaintiffs tendered two notes, or memoranda of the contracts, which purported to be signed by the broker and also by the defendant. These notes were, in fact, the sold notes which the broker had given to the plaintiffs. Each of these notes had been stamped with an anna stamp, but the stamp on one of them had not been cancelled at all, and the stamp on the other was without any mark of cancellation, except a small part of the first letter of the defendant's signature, consisting of a slightly curved line. On these notes being tendered in evidence, it was objected that they were inadmissible, being unstamped, having regard to ss. 11 and 34 of the Stamp Act. The Court allowed the objection, and rejected the notes. The plaintiffs then contended that the documents were only memoranda of parol contracts and might be regarded as agreements for the sale of goods, and exempt from stamp duty, under cl. 2, Sch. II, or at all events admissible on payment of a penalty—ss. 7 and 34:—*Held*, that the documents in question were documents of the nature of note or memorandum chargeable under Art. 46 of Sch. I, and were not exempt from duty under cl. 2 of Sch. II. RALLI *v.* CARAMALLI FAZAL.

[I. L. R. 14 Bom. 102

———, Sch. I, Art. 50, and s. 3, cl. 16, and s. 7.—*Power-of-attorney — Instrument of trust.*] Ten *mirasidars* of a village executed an instrument authorizing the person therein mentioned to recover for them from their former agent the perquisites and other communal income appertaining to their *mirasi* rights, to cultivate their *maniems*, to distribute to them proportionately to their shares the profits of certain common land &c.:—*Held*, that the instrument was a power-of-attorney and should bear a stamp of Rs. 5. REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R. 15 Mad. 386

———, Sch. I, Art. 54.—*Release—One-anna adhesive stamp—Full stamp duty leviable.*] A release chargeable with four-annas stamp duty was executed on paper bearing a one-anna adhesive receipt stamp:—*Held*, that in calculating the stamp due the one-anna stamp ought not to be taken into consideration. *Reference under Stamp*

STAMP ACT (I OF 1879), Sch. I, Art. 54 —*concluded.*

Act, s. 46, I. L. R. 8 Mad. 87, followed. REFERENCE UNDER STAMP ACT, s. 50.

[I. L. R. 15 Mad. 259

——, Sch. II, Art. 2.

See SCH. I, ART. 46.

[I. L. R. 14 Bom. 102

——, Sch. II, Art. 2.—*Exemption—Agreement for the sale of goods.*] An agreement for the sale of goods does not require stamp under the Indian Stamp Act, although it contains provisions as to the warehousing and insurance of the goods previous to delivery. KYD *v.* MAHOMED.

[I. L. R. 15 Mad. 150

——, Sch. II, Art. 13.—*Lease for planting cocoanut trees—Cultivator.*] A person whose occupation is that of a cultivator and who takes a lease of land for planting cocoanut trees is, in respect of that occupation, a "cultivator." A lease given by him is one exempt from stamp duty under Art. 13 (*b*) of Sch. II of the Stamp Act (I of 1879) if the annual rent reserved thereby does not exceed Rs. 100. RAMCHANDRA VASUDEVSHET *v.* BABAJI KUSAJI.

[I. L. R. 15 Bom. 73

STAMP-DUTY.

——, Levy of—

See APPELLATE COURT — EXERCISE OF POWERS IN VARIOUS CASES.

[I. L. R. 15 Mad. 29

——, Refund of—

See STAMP ACT, s. 51.

[I. L. R. 16 Mad. 459

STATEMENTS MADE OUT OF COURT.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION.

[I. L. R. 14 Bom. 572

STATUTE.

——, 43 Eliz., c. 4.

See BOMBAY MUNICIPAL ACT, 1888, ss. 143, 144.

[I. L. R. 16 Bom. 217

——. 4 Geo. IV, c. 34, s. 3.

See ACT XIII OF 1859.

[I. L. R. 21 Calc. 262

——, 5 & 6 Vict., c. 45.

See COPYRIGHT.

[I. L. R. 17 Calc. 951

——, 11 and 12 Vict., c. 21.

See INSOLVENT ACT.

STATUTE—*concluded.*

——, 12 and 13 Vict., c. 83 (Local and Personal).

See RAILWAY COMPANY.

[I. L. R. 15 Bom. 537
[I. L. R. 16 Bom. 434

——, 17 and 18 Vict., c. 104.

See MERCHANT SHIPPING ACT, 1854.

——, 24 and 25 Vict., c. 104, s. 15.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[I. L. R. 19 Calc. 127

——, 30 and 31 Vict., c. 124, s. 11.

See OFFENCE COMMITTED ON THE HIGH SEAS.

[I. L. R. 14 Bom. 227

——, 31 Vict., c. 4.

See SPECIFIC PERFORMANCE—SPECIFIC PERFORMANCE ALLOWED.

[I. L. R. 17 Bom. 232

——, 37 and 38 Vict., c. 27.

See OFFENCE COMMITTED ON THE HIGH SEAS.

[I. L. R. 14 Bom. 227

——, 44 and 45 Vict., c. 58, s. 151.

See SMALL CAUSE COURT PRESIDENCY TOWNS — JURISDICTION — ARMY ACT.

[I. L. R. 18 Calc. 144, 372

——, 51 Vict., c. 4, s. 7.

See SMALL CAUSE COURT PRESIDENCY TOWNS — JURISDICTION — ARMY ACT.

[I. L. R. 18 Calc. 144, 372

STATUTES, CONSTRUCTION OF.

See BENGAL MUNICIPAL ACT, 1884, s. 339.

[I. L. R. 17 Calc. 329

See BOMBAY ABKARI ACT, s. 55.

[I. L. R. 17 Bom. 154

See BOMBAY DISTRICT MUNICIPAL ACT, s. 73.

[I. L. R. 14 Bom. 180

See DEKHAN AGRICULTURISTS RELIEF ACT, s. 56.

[I. L. R. 14 Bom. 516

See LIMITATION ACT, 1877, s. 26.

[I. L. R. 14 Bom. 213

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[I. L. R. 13 All. 224

STATUTES, CONSTRUCTION OF—*contd.*

1.—*Penal Code, s.* 295, *construction of—Reference to Report of Indian Law Commissioners and of Select Committee.*] For the purpose of construing a section of an Act and ascertaining the intention of the Legislature, the Report of the Indian Law Commissioners or a Select Committee appointed to consider the Bill may be referred to. *Queen-Empress* v. *Kartick Chunder Das*, I. L. R. 14 Calc. 721, followed. ROMESH CHUNDER SANNYAL *v.* HIRU MONDAL.

[I. L. R. 17 Calc. 852

RAMACHANDRA JOISHI *v.* HAZI KASSIM.

[I. L. R. 16 Mad. 207

2.—*Specific Relief Act* (*I of* 1877), *s.* 9—*Objects and reasons for Bill—Intention of Legislature.*] *Quære*—Whether in construing an Act the "objects and reasons" for the Bill before it was passed, as indicating the intention of the Legislature, can be referred to. *Moosa v. Essa*, I. L. R. 8 Bom. 241, referred to. FADU JHALA *v.* GOUR MOHUN JHALA.

[I. L. R. 19 Calc. 544

3.—*Reference to objects and reasons and to report of Select Committee.*] In construing a statute the Court cannot refer to the statement of objects and reasons attached to a Bill, or to the report of a Select Committee, or to the debates of the Legislature, but can only look to the statute itself. *Queen-Empress* v. *Kartick Chunder Das*, I. L. R. 14 Calc. 721, and *Romesh Chunder Sannyal* v. *Hiru Mondal*, I. L. R. 17 Calc. 852 dissented from on this point. KADIR BAKHSH *v*, BHAWANI PRASAD.

[I. L. R. 14 All. 145

4.—*Chutia Nagpore Encumbered Estates Acts*, (*VI of* 1876) *and* (*V of* 1884)—*Deo Estates Act* (*IX of* 1886)—*Marginal notes to Acts.*] The State publication of the Indian Acts being framed with marginal notes, such notes may be used for the purpose of interpreting an Act. KAMESHAR PRASAD *v.* BHIKHAN NARAIN SINGH. BHIKHAN NARAIN SINGH *v.* KAMESHAR PRASAD.

[I. L. R. 20 Calc. 609

5.—*Statutes of limitation.*] Statutes of limitation being in limitation of common right are not to be extended by construction to cases not clearly included within their terms. PARASHRAM JETHMAL *v.* RAKHMA.

[I. L. R. 15 Bom. 299

6.—*Practice in contravention of the law—Hardship.*] A practice which is in contravention of the law, even if it is the practice of a High Court, cannot justify a Court in construing an Act of the Legislature in a manner contrary to its plain wording. Nor can the principles of construction to be applied to an Act, be influenced by extraneous considerations, such as questions of hardship. BALKARAN RAI *v.* GOBIND NATH TIWARI.

[I. L. R. 12 All. 129

STATUTES, CONSTRUCTION OF—*concld.*

7.—*Distinction between affirmative commands and negative prohibitions — Irregularities and illegalities.*] As a principle of the interpretation of statutes, a distinction must be drawn between cases in which a Court or an official omits to do something which a statute enacts shall be done, and cases in which a Court or an official does something which a statute enacts shall not be done. In the former case, the omission may not amount to more than an irregularity in procedure. In the latter, the doing of the prohibited thing is *ultra vires* and illegal, and therefore without jurisdiction. RAMESHUR SINGH *v.* SHEODIN SINGH.

[I. L. R. 12 All. 510

8.—*Gujarat Talukdars Act* (*Bombay Act VI of* 1888), *s.* 31, *cl.* 2—*Retrospective operation—Collector refusing to confirm sale without sanction under Act passed whilst decree was under execution.*] A decree upon a mortgage-bond passed against part of a *talukdar's* estate on the 15th August 1887, was transferred under s. 320 of the Civil Procedure Code (Act XIV of 1882) to the Collector for execution. The property was sold on the 5th August 1889, but the Collector refused to confirm the sale, as the sanction of the Governor in Council under cl. 2, s. 31 of the Talukdars Act (Bombay Act VI of 1888), which came into force on the 25th March 1889, had not been obtained:—*Held*, that the section was not retrospective in its operation, and that the sale should be confirmed, although no sanction had been obtained. When the Act passed, the plaintiff had already acquired a vested right by the decree to have the property sold, and the presumption was that the Legislature did not intend to interfere with that vested right That presumption was not rebutted by any intention to interfere appearing in the Act itself. KALIAN MOTI *v.* PATHUBHAI FALJIBHAI.

[I. L. R. 17 Bom. 289

STAY OF EXECUTION.

See EXECUTION OF DECREE — STAY OF EXECUTION.

[I. L. R. 15 Bom. 536

[I. L. R. 15 All. 196

STAY OF PROCEEDINGS.

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS.

[I. L. R. 21 Calc. 561

STOLEN PROPERTY, OFFENCES RELATING TO.

See CHARGE TO JURY—MISDIRECTION.

[I. L. R. 15 Bom. 369

1.—*Receiving stolen property—Habitually receiving stolen property—Penal Code, s.* 413.] A person cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to

STOLEN PROPERTY, OFFENCES RELATING TO—*concluded.*

support a conviction under s. 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions and on different dates. QUEEN-EMPRESS *v.* BABURAM KANSARI.

[I. L. R. 19 Calc. 190

2.—*Penal Code, s.* 411—*Dishonest retention of stolen property—Property belonging to different owners—Separate convictions.*] Where a person was found in possession of stolen property identified as belonging to different owners, but it did not appear that he had received such property at different times:—*Held*, that such person could not properly be tried and convicted under s. 411 of the Penal Code separately in respect of the property identified by each owner. *Ishan Muchi* v. *Queen-Empress*, I. L. R. 15 Calc. 511, approved. QUEEN-EMPRESS *v.* MAKHAN.

[I. L. R. 15 All. 317

3.—*Dishonestly retaining stolen property—Penal Code, s.* 411—*Legal presumption.*] Where a document, purporting to be a Collectorate notice forming part of a record and found by the Court to be genuine, was discovered to be in the possession of persons charged with retaining stolen property, it was held that, in a matter of this kind, it was right to raise legal presumptions arising out of the ordinary course of business and to dispense with direct evidence of the document having been actually on the record or stolen from it. Though it be true that, before a man can be convicted of receiving stolen property knowing it to be stolen, it must be shown that property has been stolen, *held*, that the disappearance of the document from the record *plus* the substitution of an imitation of it in its place, showed that it must have been taken with a dishonest object. ISHAN CHANDRA CHANDRA *v.* QUEEN-EMPRESS.

[I. L. R. 21 Calc. 328

STOPPAGE IN TRANSITU.

See SALE OF GOODS.

[I. L. R. 17 Bom. 62

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[I. L. R. 14 Bom. 57

STRIDHAN.

See HINDU LAW—STRIDHAN.

SUB-LETTING.

See LANDLORD AND TENANT — TRANSFER BY TENANT.

[I. L. R. 14 Bom. 384
[I. L. R. 15 All. 219, 231

SUBORDINATE JUDGE, JURISDICTION OF.

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 3.

[I. L. R. 15 Bom. 30
[I. L. R. 16 Bom. 128

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

See DEKHAN AGRICULTURISTS RELIEF ACT, S. 15 (*d*).

[I. L. R. 16 Bom. 351

See PARTITION—JURISDICTION OF CIVIL COURT IN SUITS RESPECTING PARTITION.

[I. L. R. 12 All. 506

See RIGHT OF SUIT—CHARITIES.

[I. L. R. 15 Bom. 148

See TRANSFER OF CIVIL CASE.

[I. L. R. 13 All. 324

See VALUATION OF SUIT—SUITS.

[I. L. R. 14 Mad. 183

1.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 15—*Munsif, jurisdiction of.*] Section 15 of the Civil Procedure Code does not preclude a Subordinate Judge from trying a suit within the jurisdiction of the Munsif's Court. *Ledgard* v. *Bull*, L. R. 13 I. A. 134, distinguished. MATRA MONDAL *v.* HARI MOHAN MULLICK.

[I. L. R. 17 Calc. 155

See AUGUSTINE *v.* MEDLYCOTT.

[I. L. R. 15 Mad. 241

2.—*Bengal Civil Courts Act* (*VI of* 1871), *s.* 18—*Sale in execution of decree—Local limits of jurisdiction.*] Where a District Judge, under the authority vested in him by s. 18 of the Bengal Civil Courts Act (VI of 1871) has assigned to a Subordinate Judge the local limits of his particular jurisdiction, that officer can only exercise jurisdiction within such local limits. *Obhoy Churn Coondoo* v. *Golam Ali*, I. L. R. 7 Calc. 410, and *Prem Chand Dey* v. *Mokhoda Debi*, I. L. R. 17 Calc 699, followed. DAKHINA CHURN CHATTOPADHYA *v.* BILASH CHUNDER ROY.

[I. L. R. 18 Calc. 526

3.—*Concurrent jurisdiction with District Munsif—Suit of less than Rs.* 2,500 *in value.*] *Quære*:—Whether a Subordinate Judge has not concurrent jurisdiction with a District Munsif in suits less than Rs. 2,500 in value. *Matra Mondal* v. *Hari Mohan Mullick*, I. L. R. 17 Calc. 155, and *Nidhi Lal* v. *Mazhar Husain*, I. L. R. 7 All. 230, followed. KRISHNASAMI *v.* KANAKASABAI.

[I. L. R. 14 Mad. 183

4.—*Bombay Civil Courts Act* (*XIV of* 1869), *s.* 28—*Provincial Small Cause Courts Act* (*IX of* 1887), *s.* 33—*Judge exercising Small Cause Court jurisdiction.*] Section 33 of Act IX of 1887 precludes a Subordinate Judge invested with Small Cause Court powers under s. 28 of Act XIV of 1869, from entertaining a counter claim beyond the pecuniary limits of his Small Cause Court jurisdiction. BAROTE GAGA PARSHOTAM *v.* PANJU RAMJAN.

[I. L. R. 14 Bom. 371

SUBORDINATE JUDGE, JURISDICTION OF—*concluded.*

5.—*Suit against Collector—Act done in official capacity—Bombay Revenue Jurisdiction Act (X of 1876), s. 15*] The plaintiff sued the Collector of Dharwar and his *chitnis* for having destroyed certain certificates of efficiency which had been given to him by Mamlatdars in whose service he had been employed. The defendants pleaded that the certificates had been destroyed, because they were not issued by the Mamlatdars in proper form:—*Held*, that the act of the defendants was an act done by them in their official capacity, and that the Subordinate Judge could not entertain the suit. SWAMIRAYACHARYA *v.* COLLECTOR OF DHARWAR.

[I. L. R. 15 Bom. 441

6.—*Dismissal of suit by Munsif on preliminary point—Remand by Subordinate Judge on appeal—Fresh appeal before second Subordinate Judge, who disagrees with the finding of the former Subordinate Judge.*] Where there are two Subordinate Judges in the same place, one of such Judges is not competent to overrule the decision of the other. The Court is one, though there are separate presiding officers *Suraj Din* v. *Chattar*, I. L. R. 3 All. 755 and *Ram Kirpal* v. *Rup Kuari*, I. R. 6 All. 269, referred to. KHARAG PRASAD BHAGAT *v.* DURDHARI RAI.

[I. L. R. 14 All. 348

7.—*Application for declaration of heirship—Bombay Regulation VIII of 1827, s. 2—Subordinate Judge invested with function of District Court under Act VII of 1889.*] A Subordinate Judge who (under s. 26 of Act VII of 1889) has been invested by Government with the functions of a District Court under Act VII of 1889 has jurisdiction to hear and determine an application made under s. 2 of Bombay Regulation VIII of 1827. PITAMBAR MANCHARAM *v.* ISHVAR JADURAM.

[I. L. R. 17 Bom. 230

SUB-REGISTRAR.

See MAGISTRATE, JURISDICTION OF—TRANSFER OF MAGISTRATE DURING SUIT.

[I. L. R. 15 Mad. 132

SUBROGATION.

See COMPANY—WINDING UP—DUTIES AND POWERS OF LIQUIDATORS.

[I. L. R. 18 Calc. 31

SUBSTANTIAL INJURY.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

SUCCESSION ACT (X OF 1865).

——, s. 50.

See WILL—ATTESTATION.

[I. L. R. 15 Mad. 261

SUCCESSION ACT (X OF 1865)—*concld.*

——, s. 68.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 448

——, s. 98.

See HINDU LAW—WILL—CONSTRUCTION—GIFT TO A CLASS.

[I. L. R. 15 Bom. 326, 652
[I. L. R. 16 Bom. 492

——, s. 100.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS.

[I. L. R. 15 Bom. 326
[I. L. R. 16 Bom. 492

——, ss. 102, 103.

See HINDU LAW—WILL—CONSTRUCTION—GIFT TO A CLASS.

[I. L. R. 15 Bom. 326
[I. L. R. 16 Bom. 492

——, s. 105.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 448

——, s. 159.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 448

——, s. 187.

See PROBATE—EFFECT OF PROBATE.

[I. L. R. 17 Calc. 272

See REPRESENTATIVE OF DECEASED PERSON.

[I. L. R. 14 Mad. 454

See VENDOR AND PURCHASER—TITLE.

[I. L. R. 15 Bom. 657

——, s. 239.

See RECEIVER.

[I. L. R. 17 Bom. 388

——, s. 240.

See LETTERS OF ADMINISTRATION.

[I. L. R. 17 Bom. 689

——. s. 263.

See APPEAL—CERTIFICATE OF ADMINISTRATION.

[I. L. R. 20 Calc. 245

——, s. 280.

See ADMINISTRATOR.

[I. L. R. 17 Bom. 637

——, s. 328.

See ADMINISTRATOR.

[I. L. R. 17 Bom. 637

SUCCESSION CERTIFICATE ACT (VII OF 1889).

See APPEAL—CERTIFICATE OF ADMINISTRATION.
[I. L. R. 20 Calc. 641

See BOMBAY CIVIL COURTS ACT, s. 16.
[I. L. R. 16 Bom. 277

See CERTIFICATE OF ADMINISTRATION—NATURE AND FORM OF CERTIFICATE.
[I. L. R. 15 Bom. 684

——, s. 1.

See CERTIFICATE OF ADMINISTRATION—PROCEDURE.
[I. L. R. 16 Bom. 712

——, s. 4.

See CERTIFICATE OF ADMINISTRATION—PROCEDURE.
[I. L. R. 16 Bom. 712

See CASES UNDER CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—GENERALLY.
[I. L. R. 20 Calc. 755

See PARTIES — PARTIES TO SUITS — PARTNERSHIP, SUITS CONCERNING.
[I. L. R. 18 Calc. 86

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, s. 622.
[I. L. R. 16 Mad. 454

——, s. 6.

See CERTIFICATE OF ADMINISTRATION—PROCEDURE.
[I. L. R. 16 Bom. 712

——, ss. 9. and 19.

See APPEAL — CERTIFICATE OF ADMINISTRATION.
[I. L. R. 13 All. 214

——, s. 26.

See SUBORDINATE JUDGE, JURISDICTION OF.
[I. L. R. 17 Bom. 230

SUDRAS.

See HINDU LAW—INHERITANCE—ILLEGITIMATE CHILDREN.
[I. L. R. 14 Bom. 282

SUDRAS—*concluded.*

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.
[I. L. R. 18 Calc. 151

"SUIT."

See COURT OF WARDS ACT, s. 20.
[I. L. R. 18 Calc. 500

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.
[I. L. R. 12 All. 392

See PENSIONS ACT, s. 4.
[I. L. R. 16 Bom. 731

—— for land.

See CASES UNDER JURISDICTION—SUITS FOR LAND.

——, Institution of.

See LIMITATION ACT, 1877, s. 4.
[I. L. R. 19 Calc. 780
[I. L. R. 20 Calc. 41

SUITS VALUATION ACT (VII OF 1887).

See CASES UNDER VALUATION OF SUITS.

SUMMARY PROCEDURE.

See MAGISTRATE, JURISDICTION OF — GENERAL JURISDICTION.
[I. L. R. 15 Mad. 83

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.
[I. L. R. 20 Calc. 351

SUMMONS.

See INSPECTION OF DOCUMENTS—CRIMINAL CASES.
[I. L. R. 19 Calc. 52

—— for taxing bill of costs.

See LIMITATION ACT, 1877, s. 4.
[I. L. R. 20 Calc. 899

——, Issue of.

See PARDANASHIN WOMEN.
[I. L. R. 21 Calc. 588

—— not served.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY.
[I. L. R. 14 Bom. 267

See WITHDRAWAL OF SUIT.
[I. L. R. 15 Bom. 160

——, Refusal to sign receipt for.

See PENAL CODE, s. 173 AND s. 180.
[I. L. R. 20 Calc. 358

SUMMONS, SERVICE OF.

Civil Procedure Code, 1882, *s.* 80—*Affidavit of service of summons—Practice.*] An affidavit in support of service of a writ of summons under s. 80 of the Civil Procedure Code should show that proper efforts have been made to find out when and where the defendant is likely to be found. COHEN *v.* NURSING DASS AUDDY.

[I. L. R. 19 Calc. 201

SUNDAY.

See CONTRACT—CONSTRUCTION OF CONTRACTS.

[I. L. R. 15 Bom. 338

SUPERINTENDENCE OF HIGH COURT.

		Col.
1.	Civil Procedure Code, s. 622 ...	1075
2.	Criminal Cases	1079

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.

[I. L. R. 17 Bom. 49

See CERTIFICATE OF ADMINISTRATION—CERTIFICATE UNDER BOMBAY REGULATION VIII OF 1827.

[I. L. R. 16 Bom. 708

See DECREE—ALTERATION OR AMENDMENT OF DECREE.

[I. L. R. 15 All. 121

See LAND ACQUISITION ACT, s. 19.

[I. L. R. 17 Bom. 299

See MULTIFARIOUSNESS.

[I. L. R. 16 Bom. 608

See PAUPER SUIT—SUITS.

[I. L. R. 15 Bom. 77

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE — IRREGULARITY.

[I. L. R. 20 Calc. 8

See SPECIAL APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.

[I. L. R. 14 Mad. 462

See SPECIAL APPEAL — SMALL CAUSE COURT SUITS—GENERAL CASES.

[I. L. R. 12 All. 581

(1) CIVIL PROCEDURE CODE, s. 622.

1.—*Order made by High Court, Application to review.*] Section 622 of the Civil Procedure Code (XIV of 1882) does not apply to a case where the order, of which review is sought, is made by the High Court. The Court referred to in s. 622 is a Court other than the High Court. IN RE PREMJI TRIKUMDAS.

[I. L. R. 17 Bom. 514

SUPERINTENDENCE OF HIGH COURT—*continued.*

(1) CIVIL PROCEDURE CODE, s. 622.—*contd.*

2.—*Landlord and tenant—Suit for rent.*] In a suit in a Small Cause Court for rent due in respect of two pieces of land, the Court passed a decree in favour of the plaintiff. The defendant preferred a petition to the High Court under the Civil Procedure Code, s. 622, which came on for hearing before one Judge. He held that the Small Cause Court had failed to give effect to a former decree between the parties in respect of one piece of land, and made an order reversing the decree as to that, and calling for a report of what was due on the other piece of land. The plaintiff preferred an appeal under the Letters Patent, cl. 15:—*Held*, that even if the Subordinate Judge had failed to give effect to the previous decree, the error was not such as to give the Court jurisdiction to revise his proceedings under the Civil Procedure Code, s. 622. VANANGAMUDI *v.* RAMASAMI.

[I. L. R. 14 Mad. 406

3.—*Failure to exercise jurisdiction—Refusal of application for rateable distribution of sale-proceeds.*] A debtor against whom several decrees had been passed filed his petition in the Insolvency Court at Madras and the usual vesting order was made. One of the decree-holders had already attached property of the insolvent and had obtained an order for sale in a District Court, and another decree-holder now applied to the same Court in execution of his decrees, for attachment of other property, and for rateable distribution of the proceeds of sale to be held in execution of the attachment already made. The District Judge held that the vesting order was a bar to both these applications:—*Held*, that the order rejecting the application for rateable distribution was wrong, and that the High Court had power to set it aside on revision under s. 622 of the Civil Procedure Code, the Judge having failed to exercise a jurisdiction vested in him by law. VIRARAGHAVA *v.* PARASURAMA.

[I. L. R. 15 Mad. 372

4.—*Failure to exercise jurisdiction.*] Where a Subordinate Judge wrongly held that a suit was one of the nature contemplated by s. 539 of the Civil Procedure Code, and returned the plaint for presentation to the District Judge:—*Held*, that the High Court had power under s. 622 of the Code to interfere, the Subordinate Judge having failed to exercise a jurisdiction vested in him by law. VISHVANATH GOVIND DESHMANE *v.* RAMBHAT.

[I. L. R. 15 Bom. 148

5.—*Judge putting erroneous construction on section of Act—Civil Procedure Code*, 1882, *s.* 329.] Where a Judge took an erroneous view of s. 329 of the Civil Procedure Code, and proceeded on such erroneous construction to make orders which on a proper construction of the section he would have no jurisdiction to make:—*Held*, that it was a proper case for the exercise of the powers given to the High Court under s. 622 of the Code. SALAMVA *v.* MARTYAVA.

[I. L. R. 16 Bom. 711, note

SUPERINTENDENCE OF HIGH COURT
—continued.

(1) CIVIL PROCEDURE CODE, s. 622—*contd.*

See also VISHVAMBHAR PANDIT *v.* VASUDEV PANDIT.

[I. L. R. 16 Bom. 708

a case where his erroneous construction of s. 9 of Bombay Regulation VIII of 1827, resulted in similar action being taken by a Judge.

6.—*Suit for arrears of rent—Decision of Collector on appeal from Assistant Collector—N.-W. P. Rent Act (XII of* 1881), *ss.* 183,199.] The High Court has no power to revise, under s. 622 of the Civil Procedure Code, an order passed by a Collector under s. 183 of the N.-W. P. Rent Act (XII of 1881) on appeal from an Assistant Collector of the Second Class. *Hur Pershad* v. *Lalu*, 3 N. W. 60, distinguished. RAM DAYAL *v.* RAMADHIN.

[I. L. R. 12 All. 198

7.—*Revision, powers of High Court in—Jurisdiction, want of, by lower Court.*] Unless the facts from which want of jurisdiction on the part of a subordinate Court may be inferred are patent upon the face of the record, the High Court will not interfere in revision. MIHR ALI SHAH *v.* MUHAMMAD HUSEN.

[I. L. R. 14 All. 413

8.—*Transfer of Property Act (IV of* 1882), *s.* 87, *order under—Right of appeal.*] An order, under s. 87 of Act IV of 1882 extending the time for payment of the mortgage money by a mortgagor is a "decree" within the meaning of ss. 2 and 244 of the Code of Civil Procedure, 1882, and since an appeal lies from it, no application will lie under s. 622 of the Code for revision of such order. RAHIMA *v.* NEPAL RAI.

[I. L. R. 14 All. 520

See KEDARNATH *v.* LALJI SAHAI.

[I. L. R. 12 All. 61

9.—*Order made without jurisdiction—Order cancelling sale in execution of decree under s.* 308, *Code of Civil Procedure—Appeal.*] A person who had attached a decree and obtained leave to bid at the sale of land ordered to be sold in execution, and to have the purchase-money and the amount due under the decree set off against each other, became the purchaser for a sum less than the amount due under the decree. The Court made an order under the Civil Procedure Code, s. 308, cancelling the sale and ordering a re-sale on the ground the purchaser had not paid the full amount due on his purchase within the time limited. The purchaser preferred a revision petition under the Civil Procedure Code, s. 622 :—*Held*, that the petitioner was the representative of the decree-holder within the meaning of the Civil Procedure Code, s. 244, and might have preferred an appeal against the order sought to be revised ; and that therefore the petition for division was not maintainable, although, under the circumstances above stated,

SUPERINTENDENCE OF HIGH COURT
—continued.

(1) CIVIL PROCEDURE CODE, s. 622—*contd.*

the Court had no jurisdiction to make an order under the Civil Procedure Code, s. 308. SAH MAN MULL *v.* KANAGA-SABAPATHI.

[I. L. R. 16 Mad. 20

10.—*Civil Procedure Code, s.* 206—*Amendment of decree—Munsif acting illegally but in exercise of jurisdiction.*] The holder of a decree passed in a suit on a hypothecation-bond, applied under the Civil Procedure Code, s. 206, to have the decree amended by bringing the description of the land contained therein into accordance with that contained in the hypothecation-bond, and the Court made an order accordingly. On a revision petition preferred under the Civil Procedure Code, s. 622, by the judgment-debtor :—*Held* (reversing the judgment of PARKER J., but on different reasoning by the two learned Judges constituting the Court), that the High Court had no power to interfere on revision. NARAYANASAMI *v.* NATESA.

[I. L. R. 16 Mad. 424

11.—*Madras Rent Recovery Act (Madras Act VIII of* 1865), *ss.* 10 *and* 76.] The defendant in a suit under the Madras Rent Recovery Act was evicted in pursuance of an order made under s. 10. That order having been reversed on appeal, he applied to be replaced in possession, but the Sub-Collector dismissed that application :—*Held*, that the High Court could not interfere in revision under the Civil Procedure Code, s. 622. APPANDAI *v.* SRIHARI JOISHI.

[I. L. R. 16 Mad. 451

12.—*Erroneous decision with jurisdiction—Succession Certificate Act (VII of* 1889), *s.* 4.] A person applied for leave to sue *in formâ pauperis* to recover assets forming part of the estate of a deceased person. His application was dismissed on the ground that he produced no certificate under Act VII of 1889 :—*Held*, that the application was wrongly dismissed ; and that the High Court had jurisdiction to interfere on revision under the Civil Procedure Code, s. 622. KAMMATHI *v.* MANGAPPA.

[I. L. R. 16 Mad. 454

13.—*Order allowing withdrawal of suit—Civil Procedure Code, s.* 373—*Revision.*] A Subordinate Judge, in granting the application of a plaintiff before him for permission to withdraw with leave to file a fresh suit in the same matter, made an order as to costs in favour of the defendants in the following terms :—"As the case has not been contested to the bitter end, half the pleader's fees are allowed and the process expenses, &c., incurred in the case, except those already refused to the defendants. For travelling and incidental expenses defendants to put in a bill in one week, this to be subject to the decision of the Court after hearing both parties. The application under s. 373 of the Code of Civil Procedure is granted with leave to the plaintiff to bring a fresh suit for the same matter. Costs

SUPERINTENDENCE OF HIGH COURT —*continued.*

(1) CIVIL PROCEDURE CODE, s. 622—*concld.*

allowed to defendants as above":—*Held*, that the order under s. 373 of the Code of Civil Procedure was an order liable to revision as it was not open to appeal. *Kalian Singh* v. *Lekhraj Singh*, I. L. R. 6 All. 211, referred to. DICK *v.* DICK.

[I. L. R. 15 All. 169

14.—*Order refusing to discharge surety for insolvent judgment-debtor—Civil Procedure Code, ss.* 336, 344—*Appeal.*] One *B M* became surety under s. 336 of the Code of Civil Procedure on behalf of one *G R*, a judgment-debtor, to the effect that *G R* would appear before the Court when called on, and would within one month file an application to be declared an insolvent. *G R* did so apply, but on the surety's asking the Court to declare him discharged of his liability the Court refused to do so:—*Held*, that the surety's liability was discharged by the judgment-debtor applying to be made an insolvent, and that the order refusing to discharge him was not appealable and was therefore open to revision under s. 622 of the Code. BANNA MAL *v.* JAMNA DAS.

[I. L. R. 15 All. 183

15.—*Civil Procedure Code, s.* 283—*High Court's powers of revision—Remedy by suit.*] The High Court will not exercise its revisional jurisdiction so long as there is any other remedy open to the applicant. Where a Subordinate Judge disallowed an application for the release of certain property which had been attached before judgment:—*Held* that, there being a remedy by suit under s. 283 of the Code of Civil Procedure, the High Court should not interfere with such order in revision. *Ittiachan* v. *Velappan*, I. L. R. 8 Mad. 484; *Sheo Prasad Singh* v. *Kastura Kuar*, I. L. R. 10 All. 119, and *Gopal Das* v. *Alaf Khan*, I. L. R. 11 All. 383, referred to. GUISE *v.* JAISRAJ.

[I. L. R. 15 All. 405

16.—*Exercise of power of High Court under s.* 622 *of the Civil Procedure Code*, 1882, *where there is no appeal—Order refusing to make person party to oppose probate.*] Where a Hindu died leaving a widow, and also a daughter (who alleged collusion between the widow and one of the executors applying for probate of an alleged will) the daughter was held to have sufficient interest to entitle her to be made a party to the application and to oppose the grant of probate; and the Judge having refused to make her a party, the Court, finding that no appeal lay from that order, thought it a proper case for the exercise of its power under s. 622 of the Civil Procedure Code, and remanded the case for trial as a contested application. KHETTRAMONI DASI *v.* SHYAMA CHURN KUNDU.

[I. L. R. 21 Calc. 539

(2) CRIMINAL CASES.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODE.

[I. L. R. 19 Calc. 127

SUPERINTENDENCE OF HIGH COURT —*concluded.*

(2) CRIMINAL CASES—*concluded.*

See CASES UNDER REVISION—CRIMINAL CASES.

SUPERSTITIOUS USES.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 424

SURETY.

		Col.
1.	Liability of Surety ...	... 1080
2.	Enforcement of Security	... 1080
3.	Discharge of Surety ..	... 1081

See CASES UNDER PRINCIPAL AND SURETY.

See PROMISSORY NOTE—ASSIGNMENT OF, AND SUITS ON.

[I. L. R. 19 Calc. 242

See RIGHT OF SUIT—CONTRACTS OR AGREEMENTS.

[I. L. R. 14 Mad. 473

——— for execution of decree.

See EXECUTION OF DECREE—ORDERS AND DECREES OF PRIVY COUNCIL.

[I. L. R. 15 Mad. 203

———, Order refusing to discharge—

See APPEAL—ORDERS.

[I. L. R. 15 All. 183

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.

[I. L. R. 15 All. 183

(1) LIABILITY OF SURETY.

1.—*Civil Procedure Code, ss*, 336, 344—*Judgment-debtor applying to be declared an insolvent.*] A person who executes a bond undertaking to produce a judgment-debtor at any time when the Court should direct him to do so, and standing security under s. 336 of the Civil Procedure Code for the judgment-debtor's applying to be declared insolvent, is released from his obligation under the bond when the judgment-debtor files his petition under s. 344 to be declared insolvent. *Koylash Chandra Shaha* v. *Christophoridi*, I. L. R. 15 Calc. 171, approved. RAMZAN *v.* GERARD.

[I. L. R. 13 All. 100

(2) ENFORCEMENT OF SECURITY.

2.—*Civil Procedure Code* 1882, *ss.* 253, 546, 583—*Surety for the due performance of Appellate decree—Mode of enforcing liability of such surety—Execution of decree.*] When security had been given on behalf of the respondent to an appeal under s. 546 of the Code of Civil Procedure for the due performance of the decree of the Appellate Court and the appeal had been successful:—*Held*, that under the provisions of ss. 253, 583, the

SURETY—*concluded.*

(2) ENFORCEMENT OF SECURITY—*concld.*

decree of the Appellate Court could be enforced against the sureties in execution-proceedings. *Venkapa Naik* v. *Baslingapa*, I. L. R. 12 Bom. 411, approved. THIRUMALAI *v.* RAMUYYAR.

[I. L. R. 13 Mad. 1

(3) DISCHARGE OF SURETY.

3.—*Civil Procedure Code, ss.* 336, 344—*Insolvency—Surety for insolvent judgment-debtor filing petition.*] One *B M* became surety under s. 336 of the Code of Civil Procedure on behalf of one *G R* a judgment-debtor, to the effect that *G R* would appear before the Court when called on, and would within one month file an application to be declared an insolvent. *G R* did so apply, but on the surety's asking the Court to declare him discharged of his liability the Court refused to do so:—*Held*, that the surety's liability was discharged by the judgment-debtor applying to be made an insolvent. *Koylash Chandra Shaha* v. *Christophoridi*, I. L. R. 15 Calc. 171, referred to. BANNA MAL *v.* JAMNA DAS.

[I. L. R. 15 All. 183

SURRENDER OF TENURE.

See CASES UNDER LANDLORD AND TENANT — ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 19 Calc. 790

SURVIVORSHIP.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[I. L. R. 20 Calc. 895

See HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP.

[I. L. R. 17 Calc. 33

[I. L. R. 18 Calc. 151

See HINDU LAW — JOINT FAMILY — POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS.

[I. L. R. 18 Calc. 157

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, &C.

[I. L. R. 20 Calc. 895

See HINDU LAW—WILL—CONSTRUCTION —SURVIVORSHIP.

[I. L. R. 15 Bom. 443

See HUSBAND AND WIFE.

[I. L. R. 16 Bom. 630

TALUKDAR.

See GUJARAT TALUKDARS ACT.

[I. L. R. 16 Bom. 408

TAX.

See PENSIONS ACT, s. 4.

[I. L. R. 14 Bom. 573

——, Liability to—

See BENGAL MUNICIPAL ACT, 1884, ss. 113, 116.

[I. L. R. 21 Calc. 319

——, Notice of claim to remission of—

See MADRAS TOWNS IMPROVEMENT ACT, 1871, s. 51.

[I. L. R. 14 Mad. 467

——, On professions, trades, &c.

See MADRAS MUNICIPAL ACT, s. 103.

[I. L R. 14 Mad. 140

——, On property.

See BOMBAY MUNICIPAL ACT, 1888.

[I. L. R. 17 Bom. 394

——, Proceeding to recover—

See BOMBAY DISTRICT MUNICIPAL ACT, s. 84.

[I. L. R. 17 Bom. 731

——, Suit for refund of—

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 17 Bom. 510

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884, s. 53.

[I. L. R. 13 Mad. 78

[I. L. R. 15 Mad. 153

See SMALL CAUSE COURT, MOFUSSIL — JURISDICTION—MUNICIPAL TAX.

[I. L. R. 13 Mad. 78

TAXATION, EXEMPTION FROM.

See BOMBAY MUNICIPAL ACT, 1888, ss. 143, 144.

[I. L. R. 16 Bom. 217

TAXATION OF COSTS.

See COMMISSION—CIVIL CASES.

[I. L. R. 15 Bom. 209

See COSTS—TAXATION OF COSTS.

[I. L. R. 15 Mad. 405

See RULES OF HIGH COURT, BOMBAY—RULE NO. 183.

[I. L. R. 16 Bom. 152

TAXATION OF COSTS—*concluded.*

——, Summons for—

See LIMITATION ACT, 1877, s. 4.

[I. L. R. 20 Calc. 899

TAXING OFFICER.

——, Mistake of—

See COURT-FEES ACT, s. 5.

[I. L. R. 15 All. 117

——, Power of—

See COSTS—TAXATION OF COSTS.

[I. L. R. 15 Mad. 405

TENANCY.

——, Determination of incidents of—

See BENGAL TENANCY ACT, s. 158.

[I. L. R. 19 Calc. 182

See RES JUDICATA—MATTERS IN ISSUE.

[I. L. R. 20 Calc. 249

——, Nature of—

See CASES UNDER LANDLORD AND TENANT—NATURE OF TENANCY.

TENANCY-AT-WILL.

See REGISTRATION ACT, s. 17.

[I. L. R. 14 Bom. 319

TENANCY-IN-COMMON.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 448

TENANT HOLDING OVER AFTER NOTICE TO QUIT.

See RECEIVER.

[I. L. R. 18 Calc. 477

TENDER.

—Tender of part of debt, rule as to—Plea of tender—Payment into Court.] The rule laid down in *Dixon* v. *Clark* (5 C. B. 365), that the tender of only a part of a debt must be treated as if it had never been made, applies only where the party making the tender admits more to be due than is tendered. A plea of tender before action must be accompanied by a payment into Court after action, otherwise the tender is ineffectual. ABDUL RAHMAN *v.* NOOR MAHCMED.

[I. L. R. 16 Bom. 141

THEFT.

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.

[I. L. R. 17 Bom. 369

See POST OFFICE ACT, s. 48.

[I. L. R. 14 Mad. 229

——, Suspicion of—

See FOREST ACT, ss. 52, 73.

[I. L. R. 15 Bom. 229

THEFT—*continued.*

1. *— Criminal misappropriation — Mischief — Penal Code, ss.* 378, 403, 425 *— Taking bull set at large at Sradha festival in accordance with Hindu religious usage—Res nullius—Property in Brahmini bull.*] A bull dedicated and set at large at the *Sradha* of a Hindu in accordance with religious usage is not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s. 425 of the Penal Code, and could not therefore be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. *Queen-Empress* v. *Bandhu*, I. L. R. 8 All. 51, followed. *Queen-Empress* v. *Nalla*, I. L. R. 11 Mad. 145, referred to and commented on. ROMESH CHUNDER SANNYAL v. HIRU MONDAL.

[I. L. R. 17 Calc. 852

2.—*Penal Code* (*Act XLV of* 1860), *s.* 378—*Dishonest intention—Wrongful gain — Wrongful loss.*] A charge of theft will lie under s. 378 of the Penal Code (Act XLV of 1860) even where there is no intention to assume entire dominion over the property taken, or to retain it permanently. When a person takes another man's property, believing, under a mistake of fact and in ignorance of law, that he has a right to take it, he is not guilty of theft, because there is no dishonest intention, even though he may cause wrongful loss within the meaning of the Penal Code. The accused was the brother of a farmer or contractor of a public ferry on the Tadri river. He seized a boat belonging to the complainant while conveying passengers across the creek which flows into the river at a point within 3 miles from the public ferry. His intention was apparently to compel persons who had to cross the creek to use the ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from fees to be paid by passengers crossing the creek. The accused had no reason to believe that he was justified in seizing the boat:—*Held*, that the accused was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession. QUEEN-EMPRESS *v.* NAGAPPA.

[I. L. R. 15 Bom. 344

3.—*Penal Code, ss.* 22, 378—*Earth—Moveable property.*] Earth, that is, soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft. Whoever dishonestly severs such earth from the earth commits theft. Where a person dishonestly carried away 100 cart-loads of earth from the complainant's land:—*Held*, that he was guilty of theft. *Queen-Empress* v. *Kotayya*, I. L. R. 10 Mad. 255, dissented from. QUEEN-EMPRESS *v.* SHIVRAM.

[I. L. R. 15 Bom. 702

THEFT—*continued.*

4.—*Removal of crop under attachment—Dishonest intention—Madras Rent Recovery Act, s. 8—Notice of distraint.*] Certain crops which had been distrained for arrears of revenue were harvested and removed by the owners and occupiers of the land, who were thereupon charged with theft. The accused were not the defaulters, the demand having been made upon certain other persons in whose names the *pottahs* stood, as the registered proprietors. The accused were acquitted:—*Held*, that the acquittal was wrong in the absence of a finding whether or not the accused were aware of the distraint, and dishonestly removed the crops with such knowledge, on the ground that under s. 8 of the Madras Rent Recovery Act they were entitled to notice of the distraint which had not been served on them. QUEEN-EMPRESS *v.* RAMASAMI.

[I. L. R. 16 Mad. 364

TITLE. *Col.*

1. Evidence and Proof of Title ... 1087
(*a*) Generally 1087
(*b*) Long Possession ... 1087

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

[I. L. R. 16 Mad. 207
[I. L. R. 17 Bom. 375

See VENDOR AND PURCHASER—TITLE.

[I. L. R. 15 Bom. 657

——, Acknowledgment of—

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.

[I. L. R. 13 Mad. 467

See LIMITATION ACT, 1877, ART. 148.

[I. L. R. 17 Bom. 173

——, Approval of, by Solicitor.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[I. L. R. 17 Calc. 919

——, Certificate of—

See SALE FOR ARREARS OF REVENUE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R. 18 Calc. 125

——, Covenant for waiver of—

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[I. L. R. 13 Mad. 158

——, Declaration of—

See CASES UNDER DECLARATORY DECREE SUIT FOR — DECLARATION OF TITLE.

TITLE—*continued.*

——, Denial of—

See ESTOPPEL—DENIAL OF TITLE.

[I. L. R. 13 Mad. 335
[I. L. R. 16 Mad. 328

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.

[I. L. R. 15 Mad. 223

See LANDLORD AND TENANT — EJECTMENT—NOTICE TO QUIT.

[I. L. R. 15 Bom. 407
[I. L. R. 17 Bom. 631

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[I. L. R. 17 Calc. 196
[I. L. R. 20 Calc. 101
[I. L. R. 15 Mad. 123

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 15 Bom. 422

——, Evidence of—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.

[I. L. R. 19 Calc. 91

See POSSESSION—EVIDENCE OF TITLE.

[I. L. R. 20 Calc. 834
[L. R. 20 I. A. 99
[I. L. R. 21 Calc. 244

——, Extinguishment of—

See LIMITATION ACT, 1877, s. 28.

[I. L. R. 14 Bom. 222

See LIMITATION ACT, 1877, ART. 47.

[I. L. R. 15 Bom. 299

See LIMITATION ACT, 1877, ART. 144—ADVERSE POSSESSION.

[I. L. R. 15 Bom. 261

——, Proof of—

See ONUS PROBANDI—POSSESSION AND PROOF OF TITLE.

[I. L. R. 18 Calc. 201
[I. L. R. 12 All. 46

——, Question of—

See APPEAL—N.-W. P. ACTS.

[I. L. R. 13 All. 364
[I. L. R. 14 All. 500

See BENGAL TENANCY ACT, s. 149.

[I. L. R. 17 Calc. 829

See DEKHAN AGRICULTURISTS ACT, s. 3.

[I. L. R. 16 Bom. 128

TITLE—*continued.*

——, Question of—*concluded.*

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[I. L. R. 13 All. 309

See JURISDICTION OF REVENUE COURT—MADRAS REGULATIONS AND ACTS.

[I. L. R. 15 Mad. 223

See LETTERS OF ADMINISTRATION.

[I. L. R. 21 Calc. 344

See RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

[I. L. R. 14 Bom. 627

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CROPS.

[I. L. R. 21 Calc. 430

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—QUESTION OF TITLE.

[I. L. R. 15 Bom. 400

——, Relinquishment of, deed of—

See STAMP ACT, 1879, s. 24.

[I. L. R. 15 Bom. 675

(1) EVIDENCE AND PROOF OF TITLE.

(*a*) GENERALLY.

1.—*Commission of partition.*] Under a Commission of partition issued by the Supreme Court, land in Calcutta was apportioned among the members of a family, and the allotments were confirmed by final decree in 1825. In this suit, brought in 1884, the plaintiff claimed, through one of the family, a parcel of land, by reference to one of the allotments so made. The defence, which was made by setting up a title through the widow of him who received the allotment, was not proved; but the correctness of the area allotted was also in dispute, and the Appellate Court excluded part from the decree, made by the first Court for the whole. It appeared to the Judicial Committee that there was no ground for assuming that the members of the family, who were parties to the partition suit, were under any mistake as to the family property, or that there was any error, or want of due care, on the part of the Commissioners of partition, whose proceedings had been regular: nor had there been any adverse claim to any part of the allotted land. The first Court's decree was restored. SARODA PROSUNNO PAL *v.* SHAM LAL PAL.

[I. L. R 19 Calc. 618

[L. R. 19 I. A. 75

(*b*) LONG POSSESSION.

2.—*Mokurari maurasi title, evidence of—Presumption of permanent tenure.*] A person claimed to hold a *mokurari maurasi* title to certain land which was acquired under the Land Acquisition

TITLE—*continued.*

(1) EVIDENCE AND PROOF OF TITLE—*continued.*

(*b*) LONG POSSESSION—*continued.*

Act, but could produce no *pottah* or evidence of title, other than certain rent receipts, which showed that he or his predecessors in title had held the land in question for nearly one hundred years at, presumably, a fixed rent, the nature of the tenure not being mentioned in such receipt:—*Held*, that the presumption was, in the absence of any evidence to the contrary, that the claimant had a permanent and transferable interest in the tenure and not merely an interest in the nature of a tenancy at will; and that this presumption was strengthened by the fact that his superior landlord, the *lakhirajdar*, had made no attempt to eject him or his predecessors in title during this long period. DUNNE *v.* NOBO KRISHNA MOOKERJEE.

[I. L. R. 17 Calc. 144

3.—*Suit to oust shebait from office—Tenure of office for a period greater than that provided by law of limitation.*] The plaintiff, as *shebait* of a certain Hindu endowment, instituted a suit to set aside certain leases and alienations created by one who had formerly been *shebait*, but who it was alleged had relinquished and abandoned the office on the ground that such leases and alienations were void and not binding on the endowment, and he sought to obtain *khas* possesion of the lands occupied by the defendants under such leases and alienations. Although it was admitted that the plaintiff had held possession as *shebait*, and managed the properties connected with the endowment for more than ten years, on the nomination of the Hindu residents of the locality, the defendants put the plaintiff to proof of his title as *shebait*. The lower Courts found that the plaintiff had failed to prove his title, and holding that on this ground he had no *locus standi*, dismissed the suit:—*Held*, that as a suit to oust the plaintiff from his office would have been barred by limitation, by reason of his having held the office for a period exceeding that provided by the law of limitation, he had acquired a complete title for the purposes of any litigation connected with the affairs of the endowment, and that the suit had been wrongly dismissed on the ground that the plaintiff had failed to prove his title. JAGAN NATH DAS *v* BIRBHADRA DAS.

[I. L. R. 19 Calc. 776

4.—*Presumption of title — Onus of proof—Madras Forest Act (Madras Act V of* 1882), *s.* 6.] Certain land was notified under the Madras Forest Act, 1882, to be constituted a reserved Forest. A person, alleging that the *jenm* title had been in his family for six or seven centuries, claimed to be the owner of the land. His claim was contested by Government on the allegation that the land had belonged to another family and had been escheated. The claimant admitted that he had not been in possession for six years before the date of the notification, Government having objected to his interfering with the land. It was

TITLE—*concluded.*

(1) EVIDENCE AND PROOF OF TITLE—*concluded.*

(*b*) LONG POSSESSION—*concluded.*

found that his family had been in possession for the previous sixty years at least, and that the alleged escheat was not proved:—*Held*, that the claim should be allowed. Observations on the burden of proof and on the presumption of title arising out of possession. SECRETARY OF STATE FOR INDIA *v.* BAVOTTI HAJI.

[I. L. R. 15 Mad. 315

TITLE-DEEDS.

See VENDOR AND PURCHASER—TITLE.

[I. L. R. 15 Bom. 657

——, Deposit of.

See DEPOSIT OF TITLE-DEEDS.

[I. L. R. 14 All. 238

See LIMITATION ACT, 1877, ART. 147.

[I. L. R. 14 Bom. 269

——, Refusal to produce.

See RIGHT OF WAY.

[I. L. R. 15 All. 270

——, Suit to recover.

See LIMITATION ACT, 1877, ART. 49.

[I. L. R. 15 Mad. 157

TOLLS.

See SETTLEMENT — CONSTRUCTION OF SETTLEMENT.

[I. L. R. 17 Calc. 458

TORTS.

See DAMAGES—SUITS FOR DAMAGES—TORTS.

[I. L. R. 13 All. 98

TORT FEASORS.

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES.

[I. L. R. 14 Bom. 408

TRADE-MARK.

See INJUNCTION — SPECIAL CASES — TRADE-MARK.

[I. L. R. 17 Bom. 584

TRADER OUT OF JURISDICTION.

See INSOLVENT ACT, S. 9.

[I. L. R. 20 Calc. 771

TRANSFER OF CIVIL CASE.

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES.

[I. L. R. 15 All. 315

See JURISDICTION—QUESTION OF JURISDICTION — WAIVER OF OBJECTION TO JURISDICTION.

[I. L. R. 13 Mad. 211

TRANSFER OF CIVIL CASE—*concluded.*

1.—*Suit pending in Court of Subordinate Judge with Small Cause Court powers — Transfer to Munsif's Court — Civil Procedure Code, s. 25 — Munsif, jurisdiction of — Subordinate Judge, jurisdiction of — Provincial Small Cause Court Act (IX of 1887), s. 35.*] The plaintiff filed his suit as a Small Cause Court case in the Court of a Subordinate Judge having Small Cause Court powers. During the pendency of the suit the Subordinate Judge took leave and his successor was not invested with Small Cause Court powers In consequence of this the District Judge made an order, under s. 25 of the Code of Civil Procedure, transferring all cases above the value of Rs. 50 then pending before the Subordinate Judge in his capacity as a Small Cause Court to the Munsif to be tried as Munsif's Court cases. The Munsif had Small Cause Court powers up to Rs. 50. The plaintiff's suit was for Rs. 69. The case was accordingly tried by the Munsif and the plaintiff appealed, his appeal coming before the same Subordinate Judge before whom the suit was filed:—*Held* that, granted that the suit was a Small Cause Court suit (which was not decided), whether s. 25 of the Code of Civil Procedure or s. 35 of the Provincial Small Cause Courts Act (Act IX of 1887) was applicable, it would remain throughout a Small Cause Court suit and be subject to the incidents of such a suit. MANGAL SEN *v.* RUP CHAND.

[I. L. R. 13 All. 324

2.—*Transfer of suit by order of High Court — Duty of Court to which transfer is made.*] When a suit has been transferred by an order of the High Court from the Court of a Subordinate Judge to the Court of the District Judge for trial, it is the duty of the District Judge to try the suit himself, and he is not competent to transfer the suit back to the Court of the Subordinate Judge. FATIMA BIBI *v.* ABDUL MAJID.

[I. L. R. 14 All. 531

TRANSFER OF CRIMINAL CASE.

See CRIMINAL PROCEEDINGS.

[I. L. R. 14 All. 346

See MAGISTRATE, JURISDICTION OF—POWERS OF MAGISTRATES.

[I. L. R. 13 All. 345

See MAGISTRATE, JURISDICTION OF—WITHDRAWAL OF CASES.

[I. L. R. 14 Mad. 399

[I. L. R. 15 Mad. 94

—*European British subject — Jurisdiction of High Court to transfer—Grounds for transfer—Criminal Procedure Code (X of 1882), s. 526—Act XXXVII of 1885—Sonthal Pergunnahs.*] The Court of a Magistrate in the Sonthal Pergunnahs is, as regards the trial of an European British subject, subordinate to the High Court, and the High Court has power under s. 526 of the Criminal Procedure Code to direct the transfer of

TRANSFER OF CRIMINAL CASE—*concld.*

a case in which such subject is concerned. The transfer of a case should be ordered when there are circumstances which may reasonably lead the petitioner to believe that the Magistrate has to some extent prejudged the case against him, and will in consequence be prejudiced in the trial. IN THE MATTER OF THE PETITION OF WILSON.

[I. L. R. 18 Calc. 247

TRANSFER OF PROPERTY ACT (IV OF 1882.)

—*Application of Act—Mortgages executed before Act came into force—"Property"—meaning of—General Clauses Act (I of 1868), s. 2, cls. 5, 6.*] *Held* by EDGE, C. J., STRAIGHT, TYRRELL and KNOX, JJ.—The term "property" as used in Ch. IV of Act IV of 1882, means an actual physical object, and does not include mere rights relating to physical objects. *Held* by the Full Bench:—The Transfer of Property Act (IV of 1882), so far as the question of reliefs and procedure is concerned, applies to mortgages executed before the coming into force of the Act. *Ganga Sahai* v. *Kishen Sahai*, I. L. R. 6 All. 262, and *Bhobo Sundari Debi* v. *Rakhal Chunder Bose*, I. L. R. 12 Calc. 583, referred to. *Per* MAHMOOD, J. *contra.*—The term "property" throughout Act IV of 1882 is used in its most generic sense, and will include the right known as an "equity of redemption." MATA DIN KASODHAN *v.* KAZIM HUSAIN.

[I. L. R. 13 All. 432

——, s. 2.

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 14 All. 176

——, s. 3.

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[I. L. R. 21 Calc. 116

See PRE-EMPTION—RIGHT OF PRE-EMPTION.

[I. L. R. 16 Mad. 301

——, s. 6.

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

[I. L. R. 15 Mad. 125

——, s. 10.

See LEASE—CONSTRUCTION.

[I. L. R. 17 Calc. 826

——, s. 10 and s. 12.—*Transfers by Act of parties—Assignments by operation of law.*] Sections 10 and 12 of the Transfer of Property Act (IV of 1882) relate only to transfers by act of parties. IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY.

[I. L. R. 12 All. 192

——, s. 43.

See VENDOR AND PURCHASER—MISCELLANEOUS CASES.

[I. L. R. 14 Mad. 459

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——, s. 44.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENER.

[I. L. R. 13 Mad. 275

——, s. 52.

See LIS PENDENS.

[I. L. R. 14 Mad. 491

[I. L. R. 13 All. 371

——, s. 53.

See LIS PENDENS.

[I. L. R. 13 All. 371

——, s. 54.

See REGISTRATION ACT, s. 48.

[I. L. R. 13 Mad. 324

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[I. L. R. 19 Calc. 623

[I. L. R. 16 Mad. 464

——, s. 55.

See APPELLATE COURT—OBJECTION TAKEN FOR FIRST TIME ON APPEAL.

[I. L. R. 15 Mad. 50

See VENDOR AND PURCHASER—BREACH OF COVENANT.

[I. L. R. 15 Mad. 50

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[I. L. R. 13 Mad. 158

——, s. 58.

See s. 67.

[I. L. R. 14 Mad. 232

See LIMITATION ACT, 1877, ART. 147.

[I. L. R. 16 Mad. 64

See LIMITATION ACT, 1877, ART. 148.

[I. L. R. 14 Bom. 113

See MORTGAGE—ACCOUNTS.

[I. L. R. 14 Bom. 113

See MORTGAGE—CONSTRUCTION OF MORTGAGES.

[I. L. R. 12 All. 175

[I. L. R. 13 All. 28

See MORTGAGE—FORM OF MORTGAGES.

[I. L. R. 12 All. 203

[I. L. R. 14 All. 195

See REGISTRATION ACT, s. 49.

[I. L. R. 15 Mad. 253

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——, s. 59.

See DEPOSIT OF TITLE-DEEDS.

[I. L. R. 14 All. 238

——, s. 60.

See MALABAR LAW—MORTGAGE.

[I. L. R. 16 Mad. 328

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

[I. L. R. 16 Mad. 486

——, s. 62.

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM.

[I. L. R. 16 Mad. 486

——, s. 65 and s. 68.—*Mortgagor and mortgagee—Construction of mortgage—Sale of premises at suit of a prior mortgagee—Right of a second mortgagee to sue the mortgagor personally.*] The defendants, having already mortgaged certain land to another, executed a hypothecation-bond comprising the same land in favour of the plaintiff to secure a debt due by them to the plaintiff and covenanted therein to pay to him daily the proceeds of certain sales of firewood, of which the plaintiff was to credit part towards the secured debt. The defendants having failed to pay the amount due on the first mortgage, the first mortgagee obtained a decree and brought the land to sale. The plaintiff then brought a suit in the Small Cause Court to recover the amount due on footing of his hypothecation-bond:—*Held*, that the hypothecation-bond contained no personal covenant by the obligors, but that on the construction of ss. 65 and 68 of the Transfer of Property Act the obligors had committed default so as to entitle the obligee to sue them personally under the former section. SINGJEE *v.* TIRUVENGADAM.

[I. L. R. 13 Mad. 192

——, s. 67.

See s. 99.

[I. L. R. 21 Calc. 34

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS.

[I. L. R. 13 All. 330

See LIMITATION ACT, 1877, ART. 132.

[I. L. R. 20 Calc. 269

See LIMITATION ACT, 1877, ART. 147.

[I. L. R. 16 Mad. 64

1.—s. 67 and s. 58 (d).—*Usufructuary mortgage with a personal covenant—Suit by mortgagee for sale—Right of suit.*] In a suit for sale by a mortgagee, it appeared that the mortgage comprised a covenant by the mortgagor for payment

TRANSFER OF PROPERTY ACT (IV OF 1882), s. 67—*concluded.*

of the mortgage amount, but otherwise answered the definition of a usufructuary mortgage contained in the Transfer of Property Act, s. 58 (*d*):—*Held*, that the mortgagee was not precluded by the Transfer of Property Act, s. 67, from bringing the property to sale under the mortgage. RAMAYYA *v.* GURUVA.

[I. L. R. 14 Mad. 232

2.—ss. 67, 68.—*Usufructuary mortgage—Dispossession of mortgagee—Suit for sale—Right of suit.*] The plaintiff, at the request of the mortgagors, paid off part of the debt due on a usufructuary mortgage to one of two mortgagees thereunder, and was placed by the mortgagors in possession under a usufructuary mortgage of that part of the mortgage premises which has been in the enjoyment of the mortgagee so paid off, who executed a release. The other mortgagee under the first mortgage obtained a decree for sale on the footing of that instrument, and the mortgaged premises were sold "subject to the establishment" of the plaintiff's claim: the decree-holder purchased and afterwards assigned his rights to two of the present defendants who dispossessed the plaintiff. The plaintiff then sued the mortgagors and mortgagees and the defendants above referred to:—*Held*, the plaintiff was not entitled to a decree for sale. *Semble*:—The plaintiff might have sued to have the sale, which had taken place at the suit of the first usufructuary mortgagee, declared to be invalid as against him. SAMAYYA *v.* NAGALINGAM.

[I. L. R. 15 Mad. 174

——, s. 68.

See s. 65.

[I. L. R. 13 Mad. 192

See s. 67.

[I. L. R. 15 Mad. 174

1.—s. 68.—*Sale of mortgaged premises under Land Acquisition Act—Personal suit by mortgagee.*] The sale of mortgaged premises under the Land Acquisition Act is not a destruction of the security within the meaning of s. 68 of the Transfer of Property Act, and does not enable the mortgagee to sue the mortgagor personally. ARUMUGAM *v.* SIVAGNANA.

[I. L. R. 13 Mad. 321

2.—s. 68.—*Failure of mortgagor to give possession as stipulated—Personal suit for mortgage amount.*] In a suit against a mortgagor for the principal and interest due on a mortgage, it appeared that the payment of interest had fallen into arrears, and that the mortgage-deed provided that in such event the mortgagee should be entitled to possession of the mortgage-premises; the mortgagor falsely alleged that all the interest due had been tendered:—*Held*, that the mortgagee was entitled under s. 68 of the Transfer of Property Act to sue for the amount due on the mortgage. SARAVANA *v.* CHINNAMMAL.

[I. L. R. 15 Mad. 65

TRANSFER OF PROPERTY ACT (IV OF 1882), s. 68—*concluded.*

3.—s. 68.—*Personal decree against mortgagor—Right of suit.*] Suit for a personal decree on a usufructuary mortgage which contained no express covenant to pay, but provided that, if the mortgagor repaid the secured debt before a certain date (now passed), he should be replaced in possession. The mortgaged premises had been attached in execution of a decree obtained by a third party against the mortgagor, and a claim preferred by the plaintiff having been erroneously rejected and the premises sold, he was dispossessed. The mortgagee accordingly brought his suit as above:—*Held*, that the plaintiff was not entitled to maintain the suit either under the terms of of the mortgage or under Transfer of Property Act, s. 68. GOPALASAMI *v.* ARUNACHELLA,

[I. L. R. 15 Mad. 304

———, s. 73.

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE.

[I. L. R. 20 Calc. 241

———, s. 76.

See MORTGAGE—ACCOUNTS.

[I. L. R. 15 Mad. 290

———, s. 78.

See MORTGAGE—MARSHALLING.

[I. L. R. 13 Mad. 383

[I. L. R. 15 Mad. 268

———, s. 80.

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE.

[I. L. R. 12 All. 546

1.—s. 82.—*Mortgage — Contribution — Apportionment of the mortgage-debt—Mortgage-decree.*] *A* brought a suit upon a mortgage-bond. Five of the defendants, who had subsequently purchased all the mortgaged properties, contended that under s. 82 of the Transfer of Property Act the mortgage-debt should be appportioned between the various mortgaged properties, and that each defendant should be allowed to pay off his rateable share of the mortgage-debt:—*Held*, that the intention of s. 82 was not that the lien of the mortgagee should be split, but simply to determine the liabilities of the purchasers *inter se*; and that therefore all the mortgaged properties were liable in satisfaction of the plaintiff's claim. ROGHU NATH PERSHAD *v.* HARLAL SADHU.

[I. L. R. 18 Calc. 320

2.—s. 82.—*Partial redemption of mortgage—Apportionment of mortgage-debt—Contribution.*] In 1884 *A* and *B*, being divided brothers, hypothecated to *X* and *Y* the house now in suit, which was *A's* family property, and a house belonging to *B*. In 1886 A hypothecated the house now in suit to the plaintiff. In 1888 *B* sold his house for Rs. 700 by a conveyance attested by *X* and *Y*, who accepted Rs. 550 in discharge of a moiety of the debt secured by the hypothecation of 1884,

TRANSFER OF PROPERTY ACT (IV OF 1882), s. 82—*concluded.*

the balance of Rs. 150 being retained by *B*. In this suit the plaintiff sought to recover the principal and interest due on his security of 1886, and he contended that *X* and *Y* who were defendants 4 and 5 were not justified in permitting *B* to retain Rs. 150 of the price, and that that sum should accordingly be debited against them in the accounts:—*Held* that, under the Transfer of Property Act, s. 82, plaintiff was not entitled to compel defendants 4 and 5 to satisfy their debt against *B's* house so far as it extended. NEELAMEGAN *v.* GOVINDAN.

[I. L. R. 14 Mad. 71

———, s. 83.

See RIGHT OF SUIT—SALE FOR ARREARS OF REVENUE.

[I. L. R. 13 All. 195

See SPECIFIC PERFORMANCE—SPECIFIC PERFORMANCE ALLOWED.

[I. L. R. 13 Mad. 316

———, s. 83.—*Deposit in Court by mortgagor.*] The deposit intended by the Transfer of Property Act, s. 83, must be made unconditionally. Accordingly when the mortgagor in making the deposit prays that the amount should be paid out to the mortgagee on his producing certain deeds the provisions of the section are not complied with. NANU *v.* MANCHU.

[I. L. R. 14 Mad. 49

———, s. 85.

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING.

[I. L. R. 13 All. 432

[I. L. R. 15 Mad. 487

[I. L. R. 21 Calc. 116

———, s. 86.

See DECREE—CONSTRUCTION OF DECREES—MORTGAGE.

[I. L. R. 20 Calc. 279

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED.

[I. L. R. 13 All. 330

[I. L. R. 20 Calc. 360, 366 note.

———, s. 87.

See APPEAL—DECREES.

[I. L. R. 12 All. 61

[I. L. R. 14 All. 520

See DECREE—CONSTRUCTION OF DECREES—MORTGAGE,

[I. L. R. 20 Calc. 279

See LIMITATION ACT, 1877, ART. 147.

[I. L. R. 16 Mad. 64

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

———, s. 88.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.

[I. L. R. 15 All. 75

See INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—CONTRACTS.

[I. L. R. 21 Calc. 274

———, ss. 88 and 89.

See CIVIL PROCEDURE CODE, s. 244—QUESTIONS IN EXECUTION OF DECREE.

[I. L. R. 18 Calc. 139

See EXECUTION OF DECREE—PROCEEDING IN EXECUTION.

[I. L. R. 13 All. 278

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[I. L. R. 12 All. 539

[I. L. R. 14 All. 513

[I. L. R. 15 All. 334

[I. L. R. 21 Calc. 26

———, s. 90.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[I. L. R. 13 All. 356, 360

[I. L. R. 14 All. 513

[I. L. R. 15 All. 331, 334

[I. L. R. 21 Calc. 26

———, ss. 92 and 93.

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW.

[I. L. R. 15 Mad. 170

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

[I. L. R. 13 Mad. 267

———, s. 93.

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE.

[I. L. R. 16 Mad. 214

———, s. 98.

See MORTGAGE—FORM OF MORTGAGES.

[I. L. R. 12 All. 203

———, s. 99.

See LIMITATION ACT, 1877, s. 8.

[I. L. R. 16 Mad. 436

TRANSFER OF PROPERTY ACT (IV OF 1882), s. 99—*concluded.*

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—IRREGULAR OR DEFECTIVE APPLICATIONS.

[I. L. R. 12 All. 64

See RES JUDICATA—COMPETENT COURT.

[I. L. R. 16 Mad. 481

1.—s. 99.—*Money-decree "on the responsibility of" mortgaged premises—Attachment and sale of mortgaged premises—Purchase by mortgagee.*] A usufructuary mortgagee left the mortgaged premises in the possession of the mortgagor under a rent agreement in 1878. The rent having fallen into arrear, the mortgagee sued the mortgagor in October 1882 and obtained a decree for the arrear which provided for its payment by the mortgagor "on the responsibility of the defendants *mulgeni* right" in the mortgaged premises. The decree-holder attached the mortgaged premises in execution, and having brought them to sale and purchased them himself, he sued for possession:—*Held*, that the sale was invalid under the Transfer of Property Act, s. 99. DURGAYYA *v.* ANANTHA.

[I. L. R. 14 Mad. 74

See VIGNESWARA *v.* BAPAYYA.

[I. L. R. 16 Mad. 436

2.—s. 99 and s. 67.—*Sale of mortgaged property in execution of money-decree—Sale by mortgagee of mortgaged property to satisfy a claim not arising under the mortgage.*] A mortgagee cannot sell the mortgaged property in execution of an ordinary money-decree in satisfaction of a claim not arising under the mortgage. Section 99 of the Transfer of Property Act limits the right of a decree-holder in such a case, and provides that he shall not bring the mortgaged property to sale otherwise than by instituting a suit under s. 67 of that Act. *Quære*—Whether the suit to be instituted under s. 99 is a suit on the mortgage or is one on the charge created by attachment. JADUB LALL SHAW CHOWDHRY *v.* MADHUB LALL SHAW CHOWDHRY.

[I. L. R. 21 Calc. 34

———, s. 100.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[I. L. R. 14 All. 273

See MORTGAGE — CONSTRUCTION OF MORTGAGES.

[I. L. R. 13 All. 28

———, s. 101.

See MORTGAGE — SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R. 16 Mad. 94

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

———, s. 106.

See FISHERY, RIGHT OF.

[I. L. R. 20 Calc. 446

See ONUS PROBANDI — LANDLORD AND TENANT.

[I. L. R. 13 Mad. 60

———, s. 108.

See ONUS PROBANDI — LANDLORD AND TENANT.

[I. L. R. 13 Mad. 60

———, ss. 123 and 129.

See HINDU LAW—GIFT—REQUISITES FOR GIFT.

[I. L. R. 20 Calc. 464

———, s. 135.

See LIMITATION ACT, 1877 ART. 120.

[I. L. R. 15 Mad. 382

1.—s. 135.—*Transfer of actionable claim.*] The first paragraph of s. 135 of the Transfer of Property Act has no application to a case in which the debtors deny the existence of the claim altogether, and where the purchaser of the claim has to obtain judgment affirming the claim before any satisfaction is made or tendered. Clause (*d*) of that section is not limited to cases where the judgment of a Court affirming the claim has been delivered, or where the claim is made clear by evidence, *before* the sale of the claim. *Grish Chandra* v. *Kasshisauri Debi*, I. L. R. 13 Calc. 145; *Khosdeb Biswas* v. *Satar Mondol*, I. L. R. 15 Calc. 436; and *Subbammal* v. *Venkatarama*, I. L. R. 10 Mad. 289, followed. *Jani Begam* v. *Jahangir Khan*, I. L. R. 9 All. 476, dissented from. RAJENDRA NARAIN BAGCHI *v.* WATSON & CO.

[I. L. R. 18 Calc. 510

2.—s. 135.—*Assignment for value of a debt—Decree to which the assignee is entitled.*] In a suit against a debtor an assignee for value of the debt is precluded by the Transfer of Property Act, s. 135 from recovering more than the price paid by him for the assignment with interest thereon and the incidental expenses of the sale. *Jani Begam* v. *Jahangir Khan*, I. L. R. 9 All. 476, approved. NILAKANTA *v.* KRISHNASAMI.

[I. L. R. 13 Mad. 225

3.—s. 135.—*Transfer of actionable claim—Adjudication on claim.*] In a suit upon a hypothecation-bond brought by an assignee for value from the obligee, it appeared that the obligee had previously to the assignment obtained a decree by consent against the obligors for an instalment of the money due upon it, and had also made good his claim to the land comprised in it as against an attaching creditor of the obligors:—*Held*, that there had been no adjudication on the claim to exclude the rule in the Transfer of Property Act, s. 135, and accordingly the plaintiff was entitled to recover only the sum paid by him for the assignment with interest from the date of payment to the date of the decree. RAMACHANDRA *v.* VENKATARAMA.

[I. L. R. 13 Mad. 516

4.—s. 135.—*Actionable claim — Transfer of claim for an amount less than its value—Suit by transferee to enforce claim—Defendant not entitled to plead that terms of transfer were unconscionable.*] A mortgagee by conditional sale having obtained an order for foreclosure under Regulation XVII of 1806, his heirs, who were out of possession, executed a deed of assignment to a third person, transferring to him the rights acquired by the mortgagee under that order. At the time of the execution of the deed no steps had been taken by the mortgagee or his heirs to bring a suit for declaration of their title and for possession of the property. A suit for that purpose was brought by the assignee, the defendants being the conditional vendors and also the assignors under the deed above-mentioned. The latter made no defence, but admitted the justice of the claim, and a decree was passed in favour of the plaintiff against them as well as against the other defendants:—*Held*, that the answering defendants, the conditional vendors, could not take advantage of the terms of the assignment for the purpose of defeating the claim, on the ground that the assignment was an unconscionable bargain, so unfair that the Court should not enforce it. If a person who has an actionable claim against another chooses to sell it cheap, that is no reason why that other is to stand cleared and discharged of his liability to the assignor. *Held* also, that the answering defendants were entitled to the benefit contained in the first paragraph of s. 135 of the Transfer of Property Act (IV of 1882), and would be entitled to take the bargain off the plaintiff's hands by paying to him the price and incidental expenses of the sale with the interest on that price from the day that the plaintiff paid it to the date of its repayment to him. *Jani Begam* v. *Jahangir Khan*, I. L. R. 9 All. 476, followed. *Grish Chandra* v. *Kasshisauri Debi*, I. L. R. 13 Calc. 145, and *Khoshdeb Biswas* v. *Satar Mondol*, I. L. R. 15 Calc. 436, dissented from. HAKIM-UN-NISSA *v.* DEONARAIN.

[I. L. R. 13 All. 102

5.—s. 135.—*Actionable claim—Mortgage-bond hypothecating immoveable property.*] *Per* PETHERAM, C.J., NORRIS, O'KINEALY and GHOSE, JJ. (PRINSEP, J., dissenting).—The right to recover a loan secured by a mortgage of immoveable property is an "actionable claim" within the provisions of s. 135 of the Transfer of Property Act. *Per* PETHERAM, C.J., NORRIS and GHOSE, JJ.—Where an actionable claim has been assigned, the debtor may be discharged from all liability by payment to the buyer of the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it; provided that such payment is made at any time before a judgment of a competent Court has been delivered affirming the claim, or before the claim has been

TRANSFER OF PROPERTY ACT (IV OF 1882), s. 135—*concluded.*

made clear by evidence and is ready for judgment; but if such payment is not made before the period mentioned, the assignee is entitled to judgment for the whole debt. *Per* PRINSEP, J.—The provisions of s. 135, cl. (*d*), refer to a state of things existing at the time of the assignment, and not at the time of the enforcement of the payment of the debt. *Jani Begam* v. *Jahangir Khan*, I. L. R. 9 All. 476, and *Nilakanta* v. *Krishnasami*, I. L. R. 13 Mad. 225, approved of; *Rajendra Narain Bagchi* v. *Watson & Co.*, I. L. R. 18 Calc. 510, referred to. *Per* O'KINEALY, J.—Clause (*d*) of s. 135 refers to circumstances arising before the transfer of the actionable claim and cls. (*a*), (*b*) and (*c*) refer to circumstances coming into existence at the time of the transfer. MUCHIRAM BARIK *v.* ISHAM CHUNDER CHUCKERBUTTI.

[I. L. R. 21 Calc. 568

See RUSSICK LAL PAL *v.* RAMANATH SEN.

[I. L. R. 21 Calc. 792

TRANSFER OF PROPERTY ACT AMENDMENT ACT (III OF 1885), s. 3.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

[I. L. R. 19 Calc. 623

TRANSFER OF TENURE.

See BENGAL REGULATION VIII OF 1819.

[I. L. R. 17 Calc. 162

See BENGAL TENANCY ACT, s. 12.

[I. L. R. 19 Calc. 17, 774

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

[I. L. R. 14 Mad. 98

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS.

[I. L. R. 17 Calc. 826

See LANDLORD AND TENANT—FORFEITURE—TRANSFER OF TENANCY.

[I. L. R. 20 Calc. 590

See CASES UNDER LANDLORD AND TENANT—TRANSFER BY TENANT.

See LEASE—CONSTRUCTION.

[I. L. R. 17 Calc. 826

See ONUS PROBANDI—LANDLORD AND TENANT.

[I. L. R. 13 Mad. 60

TRANSLATION.

See COPYRIGHT.

[I. L. R. 14 Bom. 586

TREATY, CONSTRUCTION OF.

—Money settled upon members of Royal Family of Oudh, and their heirs—Perpetual pensions by payments arranged between sovereign powers—Construction of the word "issue," as used in a treaty between them, and in subsequent correspondence.] An arrangement between two sovereign powers, *viz.*, the King of Oudh and the East India Company, whereby members of the Royal Family of Oudh had secured to them and to their issue pensions in perpetuity, although a settlement of pensions in perpetuity could not, under the Mahomedan law, be validly made by a private individual, took effect as a contract or treaty between the powers:—*Held*, on the construction of a treaty made in 1838 between the King of Oudh and the East India Company, that it was the intention of the King thereby to provide pensions for certain members of the Royal Family in perpetuity; that if any of the pensioners should die without issue, his or her pension should revert to the King; that the words "heirs" and "issue" were used as convertible or equivalent terms; and that they meant persons who would be heirs according to Mahomedan law. *Held*, also, that the King intended in 1842 to provide for the ancestress of the plaintiffs an additional pension of the same kind as the pension which he had provided for her in 1838; and that, according to the letter written by the King in that year to the Government of India, after her death, if she should have left issue, the additional pension was to be payable to such of her issue as should be also her heirs, according to the rules of the Mahomedan Law of Inheritance. MARIAM BEGUM *v.* MIRZA. WAZIR BEGUM *v.* MIRZA.

[I. L. R. 17 Calc. 234
[L. R. 16 I. A. 175

TREES.

——, Property in—

See LANDLORD AND TENANT—PROPERTY IN TREES, WOOD, &c.

[I. L. R. 13 All. 571

See OWNERSHIP, PRESUMPTION OF.

[I. L. R. 16 Bom. 547

——, Restriction as to felling—

See MADRAS RENT RECOVERY ACT, s. 11.

[I. L. R. 15 Mad. 47

TRESPASS.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 2.

[I. L. R. 21 Calc. 528

See DAMAGES—SUIT FOR DAMAGES—TORTS.

[I. L. R. 13 All. 98

See RECORDER OF RANGOON, JURISDICTION OF.

[I. L. R. 20 Calc. 689

TRESPASS—*concluded.*

—*Suit for arrears of rent for a period during which zemindar had been in possession as purchaser at a sale for arrears of rent afterwards set aside.*] In a suit by a zemindar against his *putnidars* for arrears of *putni* rent for the years 1294, 1295, and part of 1296, it appeared that the *putnidars* had been out of possession during a portion of that period when the zemindar himself had been in possession, having purchased the tenure at a sale held in proceedings instituted by him under the Regulation. It appeared, however, that the sale had been set aside owing to the proceedings having been instituted against the predecessor of the *putnidars* who was then dead, and thereupon the zemindar gave notice to the *putnidars* to retake possession, which they accordingly did. During the time he was in possession the zemindar himself collected some of the rent. The lower Court dismissed the claim for rent for the period during which the plaintiff was so in possession on the ground that he was a wrong-doer and trespasser, and that, consequently, the defendants could not be held liable for rent during that period:—*Held*, that this was no reason for refusing the plaintiff a decree for such arrears, as upon the authority of the decision in *Surno Moyee* v. *Shooshee Mokhee Burmonia*, 2 B. L. R. P. C. 10; 12 Moo. I. A. 244; the plaintiff could not be treated as a trespasser, and that he was entitled to recover the actual arrears outstanding for the period in question, but not the interest thereon. DHUNPUT SINGH *v.* SARASWATI MISRAIN.

[I. L. R. 19 Calc. 267

TRESPASSER.

See POSSESSION — NATURE OF POSSESSION.

[I. L. R. 15 Bom. 238

——, Suit by—

See SPECIFIC RELIEF ACT, s. 9.

[I. L. R. 15 Bom. 685

TRUST.

——, Instrument of—

See STAMP ACT, 1879, SCH. I, ART. 50.

[I. L. R. 15 Mad. 386

——, Precatory Trust.

See WILL—CONSTRUCTION.

[I. L. R. 15 Mad. 448

——, Suit relating to Charitable Trust.

See RIGHT OF SUIT—CHARITIES.

[I. L. R. 14 Mad. 186
[I. L. R. 15 Mad. 241
[I. L. R. 15 Bom. 612
[I. L. R. 16 Bom. 626
[I. L. R. 20 Calc. 397

1.—*Parol trust—Trustee—Executor de son tort—Donatio mortis causâ—Appeal as to costs—Limitation.*] One *T C* in anticipation of death handed over his property to the defendant, his brother, and verbally directed him to pay certain specified debts and to apply the surplus for the necessities and support of his family:—*Held* that a good trust was created, at any rate so far as the debts were concerned. The defendant claimed to have paid to *S*, the widow of one *L*, the deceased brother of *T C* and himself, the sum of Rs. 7,273-1 alleged to have been owing by *T C* to *L*. In a suit by the son of *T C* for an account the Assistant Registrar found (*inter alia*) in his report that Rs. 1,975 had been paid to *S* by the defendant, and that the balance Rs. 5,298-1 had been taken over by the defendant by arrangement with *S* (the first payment being time barred). *Held* that a good trust in favour of *S* for the whole debt due to her was created in respect of the moneys which reached the defendant's hands applicable under the terms of the mandate to him for the payment of her claim; that no question arose as to limitation; and that it was unnecessary to consider whether the defendant, if acting as an executor *de son tort*, had power to pay it though barred. *Held*, also, that the trust was not in the nature of a testamentary disposition, though it was created in anticipation of death, and could not after the death of *T C* be recalled by his representatives. *Peckham* v. *Taylor*, 31 Beav. 250, followed. *Quære*—Whether as to the application of the surplus after payment of the specified debts the defendant was in the position of an executor *de son tort*, and that, practically, it may in some cases be difficult to avoid the application to Hindus of the principles upon which executorship *de son tort* rests. *Jogender Narain Deb Roykut* v. *Temple*, 2 Ind. Jur. N. S 234, referred to. *Semble*:—That even upon the findings of the lower Court the order as to costs would have to be altered materially in favour of the defendant. SUDDASOOK KOOTARY *v.* RAMCHUNDER.

[I. L. R. 17 Calc. 620

2.—*Religious and charitable trust—Mortgage of trust property—Right of trustee to impeach acts of his predecessor in office—Endowment for charitable purposes.*] Property granted for religious and charitable purposes is inalienable, except under special circumstances. No person, other than the duly authorized trustee, can alienate by sale or mortgage the property of a religious trust. When a trustee does any act in breach or repudiation of the trust, such act is not binding on his successor in the trust. On the death of *D*, the hereditary trustee of a *devasthan* (or religious endowment), disputes arose between *G* and *C* as to the succession. *G* claimed to succeed as *D's* adopted son. *C* denied the adoption and claimed as *D's* heir and nearest kinsman. *C* obtained a decree against the widow of *D* for possession of the *sarasthan* property and took possession in 1874. *G*, in the same year, obtained a decree against *D's* widow, awarding him possession and management of the property. He sought to execute this decree, but was successfully resisted by *C*, who had already got possession under his decree. Pending this litigation the widow of *D*, the deceased trustee, who was *de facto* manager, mortgaged two villages forming part of the *devasthan* property. To pay off this

TRUST—*concluded.*

mortgage *G* mortgaged the villages to the plaintiff in 1875. The mortgagee sought to take possession of the villages, but he was resisted by *C*. Thereupon *G* filed a suit, *in formâ pauperis*, against *C* to recover possession and management of the whole *devasthan* property. Pending the inquiry into *G's* pauperism, both *G* and *C* referred their disputes to arbitration, and an award was made in 1881, by which the mortgaged villages and some other property belonging to the *devasthan* were assigned to *G* and his heirs in perpetuity. In 1884 the plaintiff sued to enforce his mortgage lien by sale of the mortgaged villages:—*Held* that, the villages being trust property, it lay upon the mortgagee to prove circumstances justifying a charge on such property. *Held* also that, even assuming that the mortgage money was actually applied to the purposes of the endowment, the mortgage could not be enforced against the property, as the mortgagor was not a duly authorized trustee. *Held* further, that the award made between *C* and *G* was not binding on *C's* successor in the trust, as *C* professed to act in the matter not as a trustee, but as full owner of the *devasthan* property and in repudiation of the trust. GANESH DHARNIDHAR MAHARAJDEV *v.* KESHAVRAV GOVIND KULGAVKAR.

[I. L. R. 15 Bom. 625

8.—*Assignment of religious trust—Delegation, of trust—Appointment by trustee of an agent for nine years.*] A person holding land on trust to supply a temple with rice, &c., out of the income of the land, placed the defendant in possession of it under a lease, and subsequently, in 1888, demised it to the plaintiff for nine years under an instrument which provided that the plaintiff should collect the income, pay part of it to the executant of the instrument, and with the rest perform the trusts above-mentioned. In a suit for rent the defendant denied the plaintiff's title, questioning the validity of the instrument of 1888:—*Held*, that the instrument was valid, as it merely appointed the plaintiff an agent, and did not amount to an assignment of the trust. KRISHNAMACHARLU *v.* RANGACHARLU.

[I. L. R. 16 Mad. 73

TRUST-PROPERTY.

See COURT-FEES ACT, SCH. I, ART. 11.

[I. L. R. 20 Calc. 575

TRUSTEE.

See GRANT—CONSTRUCTION OF GRANTS.

[I. L. R. 15 Bom. 247

See HINDU LAW—ENDOWMENT—DISMISSAL OF MANAGER.

[I. L. R. 17 Bom. 600

See TRUST.

[I. L. R. 15 Bom. 625

—— for judgment-debtor.

See CLAIM TO ATTACHED PROPERTY.

[I. L. R. 18 Calc. 290

TRUSTEE—*concluded.*

—— in bankruptcy.

See DEBTOR AND CREDITOR.

[I. L. R. 16 Mad. 85

——, Liability of—

See RIGHT OF SUIT—CHARITIES.

[I. L. R. 15 Bom. 612

——, Suit against—

See LIMITATION ACT, 1877, S. 10.

[I. L. R. 18 Calc. 234

[I. L. R. 14 Mad. 61

[I. L. R. 14 Bom. 476

——, Suit by—

See RIGHT OF SUIT—CHARITIES.

[I. L. R. 15 Bom. 148

See RIGHT OF SUIT—ENDOWMENTS SUITS RELATING TO.

[I. L. R. 13 Mad. 402

——, Suit for removal of—

See PARTIES—SUITS BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.

[I. L. R. 20 Calc. 810

See RIGHT OF SUIT—CHARITIES.

[I. L. R. 14 Mad. 186

[I. L. R. 20 Calc. 810

UMPIRE.

See ARBITRATION—APPOINTMENT OF ARBITRATORS AND UMPIRES.

[I. L. R. 17 Bom. 129

UNCHASTITY.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

[I. L. R. 15 All. 382

See HINDU LAW—WIDOW—DISQUALIFICATION—UNCHASTITY.

[I. L. R. 17 Calc. 674

UNCOVENANTED SERVICE FAMILY PENSION FUND, ENTRANCE CERTIFICATE OF—

See STAMP ACT, 1879, S. 3, CL. 15.

[I. L. R. 19 Calc. 499

UNDUE INFLUENCE.

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT.

[I. L. R. 13 Mad. 214

See MAHOMEDAN LAW—GIFT—VALIDITY.

[I. L. R. 16 Mad. 43

See ONUS PROBANDI—DEEDS, SUITS TO ENFORCE OR SET ASIDE.

[I. L. R. 18 Calc. 545

[I. L. R. 12 All. 523

UNLAWFUL ASSEMBLY.

See RIOTING.

[I. L. R. 12 All. 550

—*Penal Code, ss.* 141, 143—*Assertion of right.*] One of two village factions objected to the other passing in procession over a vacant piece of ground in the main street of the village. An injunction prohibiting the procession was obtained in the Court of the District Munsif on 20th March. On 11th May a procession was formed and approached the ground in question. Forty-six members of the first-named faction were assembled there to prevent the procession by force: the Police ordered them to disperse: this order having been neglected, the Police prevailed on other faction to abandon the procession:—*Held*, that the persons who did not disperse on being ordered to do so were guilty of the offence of being members of an unlawful assembly. QUEEN-EMPRESS *v.* TIRAKADU.

[I. L. R. 14 Mad. 126

UNLAWFUL COMPULSION.

See COMPOUNDING OFFENCE.

[I. L. R. 21 Calc. 103

—*Unlawful compulsory labour—Criminal force—Slavery—Wrongful confinement—Penal Code (Act XLV of* 1860), *ss.* 344, 352, 374.] The accused induced the complainants, who, he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off their debts. The complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants. He insisted on their working for him, and punished them by beating them if they did not do so. The complainants in addition alleged that they were prevented leaving the accused's premises, and that they were locked up at night. On these allegations the accused was convicted by the first Court of offences under ss. 344, 370, and 374 of the Penal Code. On appeal the convictions under the two former sections were quashed, the evidence as to detention being disbelieved, but that under s. 374 was upheld on the ground that by magnifying the complainants, debts to him and never settling their accounts, the accused had unlawfully compelled them to go on working for him against their wills. On a rule to show cause why the conviction should not be quashed:—*Held* (by PETHERAM, C.J., and BEVERLEY, J.), that the conviction was erroneous and must be set aside. PETHERAM, C.J.—A person who insists that another, who has consented to serve him, shall perform his work, does not unlawfully compel such person to labour against his will within the meaning of s. 374 of the Penal Code, because it is a thing which such person has agreed to do; but if he assaults such person for not working to his satisfaction he commits an offence punishable under s. 352. *Held*, by NORRIS, J.—That upon the facts of the case the complainants never gave their full and free consent to work and labour for the accused, and that the accused therefore did unlawfully compel them to labour against their wills, and that the conviction

UNLAWFUL COMPULSION—*concluded.*

under s. 374 was right. MADAN MOHAN BISWAS *v.* QUEEN-EMPRESS.

[I. L. R. 19 Calc. 572

USE AND OCCUPATION.

See LANDLORD AND TENANT—LIABILITY FOR RENT.

[I. L. R. 16 Bom. 568

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—RENT, SUIT FOR.

[I. L. R. 17 Calc. 541

USER.

See FERRY.

[I. L. R. 18 Calc. 652

See POSSESSION—ADVERSE POSSESSION.

[I. L. R. 16 Bom. 338

See RIGHT OF WAY.

[I. L. R. 17 Bom. 648

USURY.

See HINDU LAW—USURY.

[I. L. R. 15 Bom. 84, 625

UTBUNDI TENURE.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION.

[I. L. R. 17 Calc. 393

VACCINATOR.

See PENAL CODE, S. 186.

[I. L. R. 15 Mad. 93

VAKALATNAMA.

See PLEADER—APPOINTMENT AND APPEARANCE.

[I. L. R. 15 Mad. 135

[I. L. R. 16 Mad. 285

[I. L. R. 15 All. 55

VAKIL.

See PLEADER.

VALUATION OF APPEAL.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[I. L. R. 15 Mad. 237

[I. L. R. 18 Calc. 378

See CASES UNDER VALUATION OF SUIT—APPEALS.

VALUATION OF SUIT.

Col.

1. Suits 1109
2. Appeals 1115

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

[I. L. R. 18 Calc. 378

VALUATION OF SUIT—*continued.*

See MUNSIF, JURISDICTION OF.

[I. L. R. 21 Calc. 550

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.

[I. L. R. 15 Mad. 498

See SONTHAL PERGUNNAHS SETTLEMENT.

[I. L. R. 18 Calc. 133

(1) SUITS.

1.—*Court-Fees Act* (*VII of* 1870), *s.* 17—*Applicability of*—"*Cumulative reliefs*"—*Alternative relief.*] Where the plaintiff sues, in the alternative for one of two reliefs, the larger of the two reliefs sought determines the amount of the stamp. Section 17 of the Court-Fees Act (VII of 1870) does not apply to such a case. That section is applicable only to a case of cumulative relief sought by the plaintiff. *Motigavri* v. *Pranjivandas*, I. L. R. 6 Bom. 302, followed. KASHINATH NARAYAN *v.* GOVINDA BIN PIRAJI.

[I. L. R. 15 Bom. 82

2.—*Bengal, North-Western Provinces and Assam Civil Courts Act* (*XII of* 1887), *s.* 21—*Court-Fees Act* (*VII of* 1870), *s.* 7, *cl.* 4—*Suits Valuation Act* (*VII of* 1887), *ss.* 7, 8 *and* 11—*Jurisdiction, valuation for purposes of.*] For purposes of jurisdiction, the words "value of the original suit" in s. 21 of Act XII of 1887 are, in partition suits, to be taken to mean the value of the property in suit, and this is the valuation by which the Courts should be guided in such suits. *Kirty Churn Mitter* v. *Aunath Nath Deb*, I. L. R. 8 Calc. 757, followed. The Court-Fees Act (VII of 1870), s. 7, cl. 4, does not contemplate that a plaintiff should assign an arbitrary value to the subject-matter of the suit, and the provisions of the Suits Valuation Act (VII of 1887), ss. 7, 8 and 11, indicate that this was not the intention of the Legislature. BOIDYA NATH ADYA *v.* MAKHAN LAL ADYA.

[I. L. R. 17 Calc. 680

3.—*Stamp in partition suit.*] The plaintiff brought a suit to have 99 items of property partitioned. The plaint bore a court-fee stamp of Rs. 10. The defendants admitted that three of the properties were ancestral and joint, but as to the other items the second defendant stated that they were the self-acquired property of her deceased husband, and contended that the plaint was insufficiently stamped, as the object of the suit was to obtain a declaration of title to and possession of properties in which the plaintiff had no interest. An issue was raised on this point, and on this issue the Subordinate Judge allowed the objection and rejected the plaint. On appeal, *held* by PETHERAM, C.J., and NORRIS, J., that the plaint was sufficiently stamped. The only relief prayed for was partition, and for the purposes of the stamp the cause of action which is stated in the plaint, and that only, must be looked at. MOHENDRO CHANDRA GANGULI *v.* ASHUTOSH GANGULI.

[I. L. R. 20 Calc. 762

VALUATION OF SUIT—*continued.*

(1) SUITS—*continued.*

4.—"*Subject-matter in dispute*"—*Jurisdiction of Munsif—Claim for partition of share less than Rs.* 1,000 *in family property exceeding Rs.* 1,000.] In a suit instituted in the Court of a Munsif by a member of a Mahomedan family to have her share of the family property partitioned, the value of the plaintiff's share was found to be less than Rs. 1,000, and the value of the whole family property exceeded Rs. 1,000:—*Held*, that the subject-matter in dispute in the suit, within the meaning of s. 20 of the Bengal Civil Courts Act (VI of 1871) was the share which the plaintiff asked to have partitioned; that it was immaterial that that share was at the date of the suit a portion of family property which exceeded Rs. 1,000 in value; and that the Munsif therefore had jurisdiction to hear the suit. *Vydinatha* v. *Subramanya*, I. L. R. 8 Mad. 235; *Kirty Churn Mitter* v. *Aunath Nath Deb* I. L. R. 8 Calc. 757; *Khoorshed Hossein* v. *Nubbee Fatima*, I. L. R. 3 Calc. 551; and *Ram Chandra Narayan* v. *Narayan Mahadev*, I. L. R. 11 Bom. 216, distinguished. HIKMAT ALI *v.* WALI-UN-NISSA.

[I. L. R. 12 All. 506

5.—*Suit for partition—Value of share on partition—Subject-matter of suit—Munsif, jurisdiction of.*] Plaintiff sued in the District Court for partition of a one-seventh share purchased by him in an undivided *agraharam*, of which the total value was about Rs. 10,400, and obtained a decree:—*Held*, that the subject-matter of the suit was the share sued for and not the total value of the *agraharam*, and therefore the suit should have been filed in the District Munsif's Court. *Vydinatha* v. *Subramanya*, I. L. R. 8 Mad. 235, distinguished. RAMAYYA *v.* SUBRARAYUDU.

[I. L. R. 13 Mad. 25

6.—*Madras Civil Courts Act* (*Madras Act III of* 1873), *s.* 12—*Valuation of relief—Suits Valuation Act* (*VII of* 1887), *s.* 11—*Suit by a purchaser at a sale in execution of decree for partition—Jurisdiction of Munsif and Subordinate Judge.*] The purchaser at a Court-sale of eight *pangus* out of an estate of 28$\frac{1}{16}$ *pangus* sold them to the plaintiff. The whole estate was worth more than Rs. 2,500, but the eight *pangus* sold to the plaintiff were worth less than that sum. The plaintiff brought this suit in a Subordinate Judge's Court against his vendor and certain persons, who were in possession of, and claimed to be entitled by right of purchase to the whole estate, for partition and possession of his eight *pangus*. It was found that the plaintiff was entitled to the eight *pangus* purchased by him as against the defendants:—*Held* (1) that the value of the share sought to be recovered and not the entire value of the property should be taken to be the value of the suit for the purpose of determining jurisdiction, and that the suit was within the pecuniary limits of the jurisdiction of a District Munsif; (2) that since the disposal of the suit had not been prejudicially affected, the Suits Valuation Act, s. 11, was applicable, and the decree of the Subordinate Judge should be confirmed.

VALUATION OF SUIT—*continued.*

(1) SUITS—*continued.*

Quære—Whether the Subordinate Judge has not concurrent jurisdiction with a District Munsif in suits less than Rs. 2,500 in value. *Krishnasami* v. *Kanakasabai*, I. L. R. 14 Mad. 183. NARAYANAN *v.* NARAYANAN.

[I. L. R. 15 Mad. 69

7.—*Court-Fees Act* (*VII of* 1870), *ss.* 7, 12—*Suit to cancel an instrument affecting land—Partial interest of plaintiff in the land—Appeal against an order for payment of additional Court-fees.*] In a suit in a Subordinate Court by members of a Malabar *tarwad* to set aside an instrument affecting the whole of the *tarwad* property, the Subordinate Judge held that court-fees were leviable, assessed on the value of the property, and accordingly ordered an additional payment to be paid by the plaintiffs. The plaintiffs failed to make the payment, and the Subordinate Judge dismissed the suit:—*Held*, that the order was erroneous: since the plaintiffs would not be gainers to the extent of the value of the property if they obtained a decree, the plaint should not be valued according to the value of the whole of the *tarwad* property; (2) that the High Court was not precluded by the Court-Fees Act, s. 12, from revising it, and reversing the order as to valuation of the suit. KANARAN *v.* KOMAPPAN.

[I. L. R. 14 Mad. 169

8.—*Madras Civil Courts Act* (*Madras Act III of* 1873), *s.* 12—*Suit for declaration of membership of a tarwad—Valuation for the purposes of jurisdiction.*] The plaintiff, alleging that he was *karnavan* of the defendant's *tarwad*, sued in a Subordinate Court for a declaration that he was a member of it, adding no prayer for consequential relief. It appeared that the *tarwad* property exceeded Rs. 26,000 in value, but that the proportionate share of each member, computed as on an equal division, was less than Rs. 900. The Subordinate Judge held that the suit was within the jurisdiction of a District Munsif and rejected the plaint:—*Held*, that the value of the subject-matter of the suit was the value of the whole *tarwad* property, and not the value of what the plaintiff's share would be on partition; the order therefore was wrong and should be set aside. *Ganapati* v. *Chathu*, I. L. R. 12 Mad. 223, followed. IBRAYAN KUNHI *v.* KOMAMUTTI KOYA.

[I. L. R. 15 Mad. 501

9.—*Suit to remove a karnavan for mismanagement as de facto karnavan—Madras Civil Courts Act* (*III of* 1873), *s* 13.] In a suit brought to remove the *karnavan* of a Malabar *tarwad* from office on the grounds of mismanagement of *tarwad* property, to the extent of more than Rs. 2,500, brought in the Court of a District Munsif:—*Held*, that for the purpose of jurisdiction the suit was not one for the recovery of the *tarwad* properties, nor to be valued as such, but it was a suit for relief that was incapable of valuation, and therefore was within the jurisdiction of the District Munsif. KUNHAN *v.* SANKARA.

[I. L. R. 14 Mad. 78

VALUATION OF SUIT—*continued.*

(1) SUITS—*continued.*

10.—*Suit for restitution of conjugal rights.*] A suit for restitution of conjugal rights is not one to which any special money value can be attached for the purposes of jurisdiction. *Golam Rahman* v. *Fatima Bibi*, I. L. R. 13 Calc. 232, followed. MOWLA NEWAZ *v.* SAJIDUNNISSA BIBI.

[I. L. R. 18 Calc. 378

11.—*Court-Fees Act s. 7—Suits Valuation Act* (*VII of* 1887), *ss.* 4, 10—*Suit to set aside an adoption.*] The value, for the purposes of jurisdiction, of a suit to set aside an adoption is not the value of the property which may possibly change hands if the adoption be set aside, but the value put upon his plaint by the plaintiff. *Keshara Sanabhaga* v. *Lakshmi Narayana*, I. L. R. 6 Mad. 192, dissented from. SHEO DENI RAM *v.* TULSHI RAM.

[I. L. R. 15 All. 378

12.—*Court-Fees Act* (*VII of* 1870), *s.* 7, *para.* 5—*Suits Valuation Act* (*VII of* 1887), *s.* 8—*Jurisdiction—Suit to eject a tenant at fixed rates.*] A suit to eject a tenant at fixed rates is a suit for the possession of land within the meaning of para. 5, s. 7 of the Court-Fees Act, 1870, and the valuation of such suit for the purposes of court-fees and of jurisdiction is the value of the subject-matter of the suit, that is to say, of the tenant-right, not of the land itself nor of merely one year's rent. RAM RAJ TEWARI *v.* GIRNANDAN BHAGAT.

[I. L. R. 15 All. 63

13.—*Court-Fees Act* (*VII of* 1870), *s.* 7, *cl.* 4.—*Suit for declaration of right and for injunction.*] A suit for a declaration of right and for an injunction falls under s. 7, cl. 4, sub-clauses (*c*) and (*d*) of the Court-Fees Act (VII of 1870). The valuation of the relief sought in such a suit rests with the plaintiff, and not with the Court. *A* sued *B* and *C* (1) for a declaration of his title to certain property, and (2) for an injunction restraining *C* from paying, and *B* from receiving an allowance of Rs. 2,400 a year out of the income of the property in dispute. *A* valued each of the reliefs sought at Rs. 130, and affixed a court-fee stamp of Rs. 20 to the plaint. The Court of First Instance rejected the plaint as insufficiently stamped, holding that the claim for the injunction sought should have been valued at ten times the annual allowance paid by *C* to *B*, as provided by s. 7, cl. 2 of Act VII of 1870. On appeal to the High Court:—*Held*, that the suit fell under s. 7, cl. 4, sub-clauses (*c*) and (*d*) of the Court-Fees Act, and the plaintiff had a right to put his own valuation on the relief sought. SARDARSINGJI *v.* GANPATSINGJI.

[I. L. R. 17 Bom. 56

14.—*Court-Fees Act* (*VII of* 1870), *s.* 7—*Claim for interest from institution of suit until payment—Future mesne profits.*] No additional stamp is required on account of the claim for interest from institution of the suit until payment. It stands on the same footing as future mesne profits, which

VALUATION OF SUIT—*continued.*

(1) SUITS—*continued.*

do not fall under s. 7 of the Court-Fees Act (VII of 1870). VITHAL HARI ATHAVLE *v.* GOVIND VASUDEO THOSAR.

[I. L. R. 17 Bom. 41

15.—*Suit for possession and mesne profits—Value of the original suit—Act XII of* 1887, *s.* 21.] In a suit for possession and mesne profits, the value of the original suit for the purposes of s. 21 of Act XII of 1887 depends not merely upon the property sought to be recovered, but also upon the value or amount of the profits recoverable. MOHINI MOHAN DAS *v.* SATIS CHANDRA ROY.

[I. L. R. 17 Calc. 704

16.—*Possession and mesne profits, suit for—Court-Fees Act* (*VII of* 1870), *ss.* 7 *and* 11—*Mesne profits from the institution of suit, claim as to—Section* 169 *of the Code of Civil Procedure* (*Act VIII of* 1859)—*Section* 50, *cl.* (*r*), *and s.* 211 *of the Code of Civil Procedure* (*Act XIV of* 1882.] The plaintiff in his plaint played for mesne profits only from the institution of his suit till the property in question was restored to him, and the decree awarded him those profits and directed that they should be determined in execution. After the property was restored to the plaintiff, he applied, in execution of the decree, to have the amount of mesne profits determined, which being done, a question arose as to whether the plaintiff could proceed to further execute his decree without paying the court-fee on the amount so awarded in execution:—*Held*, that no court-fee was required. Section 11 of the Court-Fees Act (VII of 1870) applies to a claim for mesne profits for which an amount can be and has been claimed by the plaint, and in respect of which some fee has been actually paid. RAMKRISHNA BHIKAJI *v.* BHIMABAI.

[I. L. R. 15 Bom. 416

17.—*Suit for declaratory decree—Declaration sought that certain property was joint ancestral property and not liable to attachment in execution of a certain decree—Court-Fees Act* (*VII of* 1870), *Sch. II, Art.* 17, *cl.* 3 *and s.* 7, *cl.* 4.] The plaintiffs specified in their plaint as the reliefs sought by them,—(1) That it be declared by the Court that the property mentioned at foot is the joint ancestral property of the plaintiffs and not liable to attachment and sale in execution of the decree of the defendant 4, dated 4th December 1883, against the defendant 1. (2) That the costs of the suit be also awarded by the decree. The suit is valued with reference to the amount of the decree and the value of the property at Rs. 6,000. (3) That any other relief which the Court may think the plaintiffs entitled to may also be granted:—*Held*, that the suit should be deemed a suit for one declaratory decree only without consequential relief, and that consequetly a court-fee of Rs. 10 was sufficient. GOBIND NATH TIWARI *v.* GAJRAJ MATI TAURAYAN.

[I. L. R. 13 All. 389

VALUATION OF SUIT—*continued.*

(1) SUITS—*continued.*

18.—*Court-Fees Act, Sch. I, cl.* 1—*Suit for cancellation of an agreement to sell—Ad valorem fee*] The plaintiff had executed an agreement to sell certain property in discharge of mortgages executed on his behalf during his minority. He now brought a suit alleging that the agreement had been extorted from him, and praying for a declaration that the agreement was not binding on him, and for any other relief "which the Court considers to be reasonable":—*Held*, that the plaintiff was bound to pay court-fees upon the value of his interest in the document sought to be invalidated. PARATHAYI *v.* SANKUMANI.

[I. L. R. 15 Mad. 294

19.—*Court-Fees Act* (*VII of* 1870), *s.* 7, *cl.* 5—*Madras Civil Courts Act* (*Madras Act III of* 1873), *ss.* 12, 14—*Suit to enforce registration—Jurisdiction of Munsif.*] Suit in the Court of a District Munsif to enforce registration of two instruments of gift. The property purported to be conveyed was the same in each instrument, and its value was found to be less than Rs. 2,500, but the earlier instrument comprised also an assignment of the right to manage a charity. The later instrument was found to have been executed in supersession of the former, and the District Munsif passed a decree directing its registration alone:—*Held*, that the documents standing in the relation to each other of operative and superseded document, the valuation of the suit for the purposes of jurisdiction was the value of the interest created by the operative document; and that the District Munsif had jurisdiction to entertain the suit. RAMAKRISHNAMMA *v.* BHAGAMMA.

[I. L. R. 13 Mad. 56

20.—*Suit on mortgage—Suit for redemption of mortgage — Value of subject-matter of suit.*] In a suit upon a mortgage, where the sum due upon the mortgage is unknown, what determines the value of the subject-matter of the suit is the amount of the mortgage, the rights connected with which are the subject of contention. RAMCHANDRA BABA SATHE *v.* JANARDHAN APAJI.

[I. L. R. 14 Bom. 19

21.—*Court-Fees Act* (*VII of* 1870), *s.* 7—*Suit for redemption of mortgage*] In a suit for the redemption of a *kanom* the institution fee must be computed on the *kanom* debt as it originally stood. REFERENCE UNDER COURT-FEES ACT, S. 5.

[I. L. R. 14 Mad. 480

22.—*Suit to redeem mortgage and for rent—Madras Civil Courts Act* (*Madras Act III of* 1873), *s.* 14.] The *karnavan* of a Malabar *tarwad*, having the *jenm* title to certain land and holding the *uraima* right in a certain public *devasom* to which other land belonged, demised lands of both description on *kanom* to the defendants' *tarwad*, and subsequently executed to the plaintiff a *melkanom* of the first-mentioned land and purported to sell to him the *jenm* title to the last-mentioned

VALUATION OF SUIT—*continued.*

(1) SUITS—*concluded.*

land. In a suit brought by the plaintiff to redeem the *kanom*, and to recover arrears of rent:—*Held* that, for the purposes of determining the jurisdiction of the Court of Appeal, the value of the subject-matter of the suit was the aggregate value of the two heads of relief. KONNA PANIKAR *v.* KARUNAKARA.

[I. L. R. 16 Mad. 328

(2) APPEALS.

23.—*Bengal, N.-W. P. and Assam Civil Courts Act* (*XII of* 1887), *s.* 21, *cl.* (*a*)—"*Value of the original suit*"—"*Amount or value of the subject-matter of the suit*"—*District Judge, jurisdiction of*—*General Clauses Act* (*I of* 1887), *s.* 3, *cl.* 13.] For the purpose of determining the proper Appellate Court in a civil suit what is to be looked to is the value of the original suit, that is to say, the "amount or value of the subject-matter of the suit." Such "amount or value of the subject-matter of the suit" must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the Court, unless it appear that, either purposely or through gross negligence, the true value of the suit had been altogether misrepresented in the plaint. MAHABIR SINGH *v.* BEHARI LAL.

[I. L. R. 13 All. 320

24.—*Ground of appeal going to the whole of the respondents' decree.*] Where one of several appellants takes a ground of appeal which goes to the root of the respondent's case, and which, if successful, would deprive the respondent of his decree as a whole, and not merely of his interest in it *quoad* the particular appellant, the Appellate Court is justified in refusing to hear such appellant on such ground as aforesaid unless he pays a court-fee sufficient to cover the whole relief obtainable on such ground of appeal. BUJHAWAN RAI *v.* MAKUND LAL.

[I. L. R. 15 All. 112

25.—*Suit of the nature cognizable in Courts of Small Causes.*] For the purposes of an appeal, whether from a decree in a regular suit or from an order passed in execution of such decree, the pecuniary test of jurisdiction is the valuation of the original suit in which the decree was passed, and not merely the actual amount affected by the order sought to be appealed. NAZAR HUSAIN *v.* KESRI MAL.

[I. L. R. 12 All. 581

26.—*Court-Fees Act* (*VII of* 1870), *s.* 7—*Decree for ejectment and mesne profits—Court-fee on memorandum of appeal.*] A memorandum of appeal from a decree directing ejectment and awarding mesne profits is chargeable with court-fees calculated both on the land and on the mesne profits. BRAHMAYYA *v.* LAKSHMINARASIMHAM.

[I. L. R. 16 Mad. 310

27.—*Court-Fees Act* (*VII of* 1870), *Sch. II, Art.* 17, *cl.* 6—*Memorandum of appeal under Bengal Tenancy Act* (*VIII of* 1885), *s.* 108, *cl.* 3.] The court-fee payable on a memorandum of appeal

VALUATION OF SUIT—*continued.*

(2) APPEALS—*continued.*

presented to the High Court under s 108, cl. 3 of the Bengal Tenancy Act of 1885 is that prescribed by Art. 17, cl. 6 of Sch. II of the Court-Fees Act. PETU GHORAI *v.* RAM KHELAWAN LAL BHUKUT.

[I. L. R. 18 Calc. 667

28.—*Court-Fees Act* (*VII of* 1870), *Sch. II, Art.* 1, *and Sch. I, Art.* 1—*Court-fees stamp on memorandum of second appeal to High Court from decision of District Court on appeal from Talukdari Settlement Officer—Application for execution of decree for partition—Gujarat Talukdars Act* (*Bombay Act VI of* 1888).] A second appeal from an order rejecting an application for execution of a partition decree under the Gujarat Talukdars Act (Bombay Act VI of 1888) is not within the contemplation of Art. 1, Sch. I, but is an application falling under Art 1 of Sch. II of the Court-Fees Act (VII of 1870). The court-fee stamp of Rs 2 should, therefore, be affixed to the memorandum of appeal. JAMSANG DEVABHAI *v.* GOYABHAI KIKABHAI.

[I. L. R. 16 Bom. 408

29.—*Court-Fees Act* (*VII of* 1870), *s.* 16, *and Sch. I, Art.* 1—*Court-fee on appeal from decree granting partial relief—Decree payable by instalments, appeal from.*] The court-fees which an appellant has to pay on a memorandum of appeal from a decree which gives him only partial relief are to be calculated upon the difference between the value of the relief which he claims and the relief granted by the decree appealed against. Where a decree was made payable by three instalments, and the plaintiff appealed on the ground that it should not have been made so payable:—*Held*, that the court-fee should be calculated upon the difference between the amount claimed in the Court below and the sum of the present values of the three instalments payable on the dates mentioned in the decree. LUKHUN CHUNDER ASH *v.* KHODA BUKSH MONDUL.

[I. L. R. 19 Calc. 272

30.—*Madras Civil Courts Act* (*III of* 1873), *s.* 13 (2)—*Appeal from Subordinate Judge—District Judge, jurisdiction of.*] Certain members of a Moplah family sued the others in a Subordinate Judge's Court to recover their distributive share under Mahomedan law. The property to be divided was more than Rs. 5,000 in value, but the share claimed by the plaintiffs was less. The Subordinate Judge passed a decree, against which an appeal was preferred to the District Court, but the District Judge returned the appeal for presentation in the High Court. On appeal to the High Court against the decision of the District Judge:—*Held*, that it is the value of the share claimed and not the value of the property from which that share has to be taken, that is the value of the subject-matter of the suit within the meaning of cl. 2, s. 13 of the Madras Civil Courts Act, and therefore the District Court had jurisdiction to entertain the appeal. KUNHIKUTTI *v.* ACHOTTI.

[I. L. R. 14 Mad. 462

VALUATION OF SUIT—*continued.*

(2) APPEALS—*continued.*

31.—*Madras Civil Courts Act* (*Madras Act III of* 1873), *s.* 12—*Jurisdiction of District Judge—Valuation of relief—Suit for partition.*] In an appeal against a decree of a Subordinate Judge dismissing a suit brought by the members of one Nambudri *illom* against the members of another for partition and delivery of a moiety of the property of an extinct *illom*, it appeared that the value of the share claimed was less than Rs. 5,000:—*Held*, that the appeal lay to the District Court. *Krish-nasami* v. *Kanakasabai*, I. L. R. 14 Mad. 183, followed. NARAYANAN *v.* NARAYANAN.

[I. L. R. 15 Mad. 69

32.—*Madras Civil Courts Act* (*III of* 1873), *s.* 13—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 331—*Jurisdiction of District Judge.*] The plaintiff being the holder of a decree of a Subordinate Court for more than Rs. 5,000 was obstructed in execution by the present defendants. He applied to the Court for the removal of the obstruction, the property, which was the subject of the application, being valued at less than Rs. 5,000, and the Subordinate Judge directed that the application be registered as a regular suit under the Civil Procedure Code, s. 331, and ultimately passed a decree in favour of the plaintiff:—*Held*, that the valuation of the appeal for the purpose of jurisdiction was to be taken as being less than Rs. 5,000, notwithstanding that the subject-matter of the original suit was valued above that sum, and that the appeal lay to the District Judge and not to the High Court. KALIMA *v.* NAINAN KUTTI. MAHOMED *v.* NAINAN KUTTI.

[I. L. R. 13 Mad. 520

33.—*Court-Fees Act* (*VII of* 1870), *Sch. I, Art.* 1; *Sch. II, Art.* 17—*Suit on bond.*] In a suit upon a hypothecation-bond it was found by the Court of First Appeal that the bond and the debt secured thereby were binding on the first defendant, but not on the second defendant. The plaintiff preferred a second appeal against the second defendant as sole respondent:—*Held*, that the court-fee payable on the second appeal should be calculated on the amount of the debt sought to be recovered. RAMASAMI *v.* SUBBUSAMI.

[I. L. R. 13 Mad. 508

34.—*Suit for ejectment — N.-W. P. Rent Act, s.* 93, *cl.* (*h*)—*General Clauses Act* (*I of* 1887), *s.* 3, *cl.* (13)—*Subject-matter of suit — Appeal valued for purposes of jurisdiction at a higher amount than the suit.*] Where a plaintiff in a suit under s. 93 of the N.-W. P. Rent Act valued his suit at Rs. 46-3, which valuation was not objected to either by the defendant or the Court, and subsequently, being defeated in his suit, preferred an appeal, which he valued at a very much greater amount:—*Held*, that he must be bound by the valuation put by him upon his suit, and could not by alleging a greatly enhanced value obtain an appeal which would not have lain on the valuation stated in the plaint. *Ram Raj Tewari* v. *Girnandan Bhagat*, I. L. R. 15 All. 63, distinguished; *Mahabir Singh* v. *Behari Lal*, I. L. R. 13 All. 320, referred to. RADHA PRASAD SINGH *v.* PATHAN OJAH.

[I. L. R. 15 All. 363

35.—*Court-Fees Act* (*VII of* 1870), *s.* 10, *cl.* 2; *s.* 12, *cl.* 11; *Sch. II, Art.* 17, *cl.* 6—*Order in appeal by defendant for payment of fee by plaintiff.*] The plaintiffs, having raised a claim to a *kanom* attached in execution of a decree against their undivided brother, which was allowed in part, sued for a declaration of their title to four-fifths of the *kanom* amount, affixing to the plaint a Rs. 10 stamp. The plaintiffs obtained a decree, against which the defendant appealed to the District Court. While the appeal was pending the District Judge, holding that the court-fee paid on the plaint was insufficient, ordered that the plaintiffs should pay the balance due on an *ad valorem* computation of the fee, and, in default, that the suit should stand dismissed. The plaintiffs first became aware of this order on the 26th March; the balance was not paid within the time fixed by the District Judge for the payment to be made, and on the 28th March he accordingly made an order dismissing the suit:—*Held*, that the plaint was sufficiently stamped, and that, in any case, the order dismissing the suit while the appeal was still pending was irregular. KAMMATHI *v.* KUNHAMED.

[I. L. R. 15 Mad. 288

36.—*Judge on appeal dealing with valuation of suit irregularly—District Judge, jurisdiction of —Appeal by one of several defendants—Court-Fees Act, s.* 10, *cl.* 2; *s.* 12, *cl.* 2.] The plaintiff sued four persons to recover, with arrears of rent, possession of three parcels of land and obtained a decree in the Court of a District Munsif. The suit was valued at Rs. 489-8-0. Defendant 4, who claimed to be entitled as *jenmi* to one of the parcels, preferred an appeal. The District Judge held that the suit should have been valued at Rs. 1,164-8-0, and he made an order that additional court-fees should be paid accordingly; the order not having been complied with, he made an order "original suit rejected." He subsequently referred the appeal for disposal to a Subordinate Judge, who accordingly passed a decree, allowing the appeal of defendant 4 with costs. On appeal against the above order and decree:—*Held*, that the order of the District Judge was irregular, and the appeal should be restored to the file of the Subordinate Judge to be disposed of according to law. KERALA VARMA *v.* CHADAYAN KUTTI.

[I. L. R. 15 Mad. 181

37. — *Memorandum of appeal insufficiently stamped—Conditional order admitting appeal—Deficiency made good after period of limitation—Appeal from decree granting two distinct declarations.*] A plaint contained a prayer for a declaration (*i*) that certain property was the joint

VALUATION OF SUIT—*continued.*

(2) APPEALS—*continued.*

property of the plaintiff; and (*ii*) that it was not liable to attachment and sale in execution of a decree held by one of the defendants against another; and, as a foundation for the latter relief, alleged collusion, fictitious transactions, and want of title. The decree in the suit, passed on the 14th September 1887, granted both the declarations prayed for. The defendants appealed to the High Court against the whole decree and stamped their memorandum of appeal with a stamp of Rs. 10 only. On the 9th November 1887 it was tendered to a Judge for admission, and it then bore a report dated the 7th November by the officer appointed under s. 5 of the Court-Fees Act, "report will be made on receipt of record." The Judge made an order, "admit, subject to stamp report," and the memorandum was then received by the office, and the appeal was entered on the register. On the 27th September 1888 the office reported that there was a deficiency in the stamp of Rs. 615; on the 9th November the taxing officer ordered that the deficiency should be made good; and on the 8th December 1888 it was made good. At the hearing of the appeal a preliminary objection was taken that the appeal had never been validly presented within time, or admitted, and that it could not be heard:—*Held*, that there was before the Court no valid appeal as to the merits of which the Court could give a decision. *Held* also, that the stamp of Rs. 10 was insufficient, inasmuch as two distinct declarations were asked for and obtained, and were by the appeal sought to be set aside; and it was not the province of the taxing officer or of the Judge or Court on a question of the sufficiency of a stamp or fee to consider whether a plaintiff or an appellant was asking for more declarations or reliefs than were required for his protection. BALKARAN RAI *v.* GOBIND NATH TIWARI.

[I. L. R. 12 All. 129

38.—*Decree for redemption conditional on payment of a certain sum—Appeal by mortgagor—Court-fee payable on memorandum of appeal—Act VII of* 1870 (*Court-Fees Act*), *s.* 7, *cl.* 4.] Where a mortgagor sues for redemption on the allegation that the mortgage-debt has been satisfied, and a decree for redemption is passed on payment of a certain amount, and the mortgagor appeals against the amount he is ordered to pay, the court-fee payable on the memorandum of appeal must, under s. 7, cl. 9 of Act VII of 1870 be computed according to the principal money expressed to be secured by the instrument of mortgage, and not according to the balance which the mortgagor alleges to be due. *Semble*:—If the decree had allowed redemption on payment of a certain sum, and the defendant mortgagee was appealing on the ground that the amount due was greater than that sum, the court-fee should be calculated on the difference between the sum mentioned in the decree and the amount alleged by the appellant to be due. PIRBHU NARAIN SINGH v. SITA RAM.

[I. L. R. 13 All. 94

VALUATION OF SUIT—*concluded.*

(2) APPEALS—*concluded.*

39.—*Court-Fees Act* (*VII of* 1870), *s.* 7, *cl.* 9—*Madras Civil Courts Act* (*Madras Act III of* 1873), *s.* 13—*Suits Valuation Act* (*VII of* 1887), *s.* 11—*Redemption, suit for—District Judge, jurisdiction of.*] In a suit in the Court of a Subordinate Judge to redeem certain land on payment of Rs. 1,625, being a quarter of a debt for which it had been mortgaged together with other land, a decree was passed for redemption of part of the land, but the Court held that the plaintiff had not established his right to the rest. The plaintiff appealed to the High Court paying *ad valorem* court-fees computed on the value of the land exonerated only:—*Held*, (1) that the *ad valorem* court-fees should be computed on one-fourth of the mortgage-debt; (2) that the appeal lay to the District Court, and since Act VII of 1887, s. 11, did not apply to the case, the petition of appeal should be returned for presentation in that Court. VASUDEVA *v.* MADHAVA.

[I. L. R. 16 Mad. 326

40.—*Court-Fees Act* (*VII of* 1870), *s.* 17—*Redemption suit — Claim by mortgagor for rent in same suit—Court fee on appeal.*] A suit to redeem a mortgage for Rs. 3,500 and to recover a certain sum on account of rent was dismissed so far as the prayer for redemption was concerned, and also part of the claim for rent was disallowed. It did not appear that the arrears of rent were intended to be set-off against the mortgage-debt. The plaintiff appealed:—*Held*, that the court-fee should be computed on the principal amount of the mortgage-debt and on the claim which had been disallowed on account of rent. RAMA VARMA RAJAH *v.* KADAR.

[I. L. R. 16 Mad. 415

VARIANCE BETWEEN PLEADING AND PROOF.

See APPEAL—GROUNDS OF APPEAL.

[I. L. R. 15 Mad. 503

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT.

[I. L. R. 17 Bom. 631

See RELIEF.

[I. L. R. 15 Mad. 489

1.—*Mortgage—Suit for redemption by purchaser of equity of redemption—Evidence given by defendants of other mortgage than the mortgage in respect of which suit brought—Right of plaintiff to have plaint amended and the question of latter mortgage determined.*] The plaintiff as purchaser of the equity of redemption sued for redemption. He alleged a mortgage, dated A.D. 1849, for Rs. 175. The defendants admitted a mortgage, but alleged that it was executed at a different time and for a larger sum. After the evidence was given, but before the judgment was delivered, the plaintiff applied to amend the plaint and to set up the mortgage admitted by the defendants.

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

His application was refused, and the Court dismissed the suit on the ground that he had failed to prove the particular mortgage alleged in the plaint. The District Judge confirmed the decree, but observed that there probably was a mortgage for the larger sum as alleged by the defendants. On second appeal:—*Held*, reversing the decree and remanding the case, that the plaintiff was entitled to have the question of the mortgage for the larger sum inquired into. CHIMNAJI *v.* SAKHARAM.

[I. L. R. 17 Bom. 365

2.—*Suit to prevent encroachment.*] Where the plaintiff suing to prevent an encroachment on certain land alleged that the land was set apart for recreation, but the evidence established that it was set apart generally for the more convenient occupation of the houses surrounding it (which would include recreation purposes):—*Held*, that the plaintiff ought not on that account to fail altogether and be left to a fresh action. The defendant had not been misled or induced to refrain from calling evidence to rebut the plaintiff's case. RANCHORDAS AMTHABHAI *v.* MANEKLAL GORDHANDAS.

[I. L. R. 17 Bom. 648

3.—*Suit by decree-holder to declare a house subject to attachment in execution as being the property of the judgment-debtor — Decree for plaintiff on ground that judgment-debtor, though not the owner of the house, had an attachable interest in it as permanent tenant — New case made on appeal.*] The plaintiff's case being that a certain house was the absolute property of his judgment-debtor, and that, therefore, he (the plaintiff) was entitled to attach it in execution of his decree, the Subordinate Judge found that the judgment-debtor was not the owner of the house, and rejected the plaintiff's claim. The Appellate Court held that (though the judgment-debtor was not the owner) he had an attachable interest in the house as permanent tenant, and allowed the plaintiff's claim. On appeal to the High Court by the defendant:—*Held*, that the order of the Appellate Court made out an entirely new case for the plaintiff which he had not made himself at any period of the trial, and that the decree of the lower Appellate Court should be reversed. IRANGOWDA *v.* SESHAPA.

[I. L. R. 17 Bom. 772

4.—*Suit for ejectment against defendant as tenants and on failure as trespassers—Case set up in appeal which was not that set up in the Court of First Instance.*] The plaintiff came into Court on the allegation that she was the owner of a certain house, and that the defendants were her tenants at a certain rent, and she sought to eject the defendants for non-payment of rent. The Court of First Instance having found her allegations of tenancy to be untrue, she then in appeal endeavoured to support a plea that the defendants were trespassers, such plea having formed no part of the original case:—*Held*, that the plaintiff could not under the circumstances be heard in support of a new plea of which the defendants had had no notice until the case was in appeal. *Lakshmibai v. Hari-bin Ranji*, 9 Bom. 1, referred to. NAIKU KHAN *v.* GAYANI KUAR.

[I. L. R. 15 All. 186

VARIANCE BETWEEN PLEADING AND PROOF—*concluded.*

5.—*Alleged inconsistency in pleadings—Construction of solehnama—Estoppel—Objection taken for first time on appeal.*] After the death of a Hindu widow, a suit was brought to have a sale of a portion of her husband's estate made by her set aside on the ground that the sale was invalid except in so far as it affected the rights of the widow herself therein. The plaintiff, who was a collateral relation, alleged himself to be the heir, and sued as such, but was not so in fact. It appeared, however, that a *solehnama* had been entered into between him and the heir by virtue of which he had acquired all the rights of the heir in the property in suit. It did not appear that any objection had been taken in the lower Courts to the framing of the suit on the ground that the plaintiff was not the heir, and the defendant was allowed to raise the same objection to the suit as he might have taken had it been brought by the heir. On appeal it was contended on behalf of the defendant that the plaintiff, having sued as heir, could not be allowed to succeed on the basis of the *solehnama*, as this would be contrary to the rule laid down in *Eshan Chunder Singh* v. *Shama Churn Bhutto*, 11 Moo. I. A. 7:—*Held*, that if this objection had been taken in the first Court, the plaint and issues might and ought to have been amended, but as it was not so taken, and the substance of the case in the plaint was that the sale by the widow was invalid beyond her own interest, under the circumstances of the case there was no weight in the contention of the appellant. NURUL HOSSEIN *v.* SHEOSAHAI LAL.

[I. L. R. 20 Calc. 1
[L. R. 19 I. A. 221

VATAN.

See SERVICE TENURE.

[I. L. R. 14 Bom. 82
[I. L. R. 15 Bom. 13

VATANDARS.

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 14 Bom. 404

See CASES UNDER HEREDITARY OFFICES ACT.

VENDOR AND PURCHASER.

		Col.
1.	Breach of Covenant ...	... 1123
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3.	Notice	... 1124
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[I. L. R. 14 Bom. 222

VENDOR AND PURCHASER—*continued.*

See MORTGAGE—FORM OF MORTGAGES.

[I. L. R. 14 Mad. 170

See ONUS PROBANDI—LIMITATION AND ADVERSE POSSESSION.

[I. L. R. 16 Bom. 343

See SALE OF GOODS.

[I. L. R. 17 Bom. 62

(1) BREACH OF COVENANT.

1.—*Breach of implied covenant for title—Transfer of Property Act (IV of* 1882), *s.* 55 (2)—*Covenant for title, waiver of—Fraud.*] When a vendee, who sues to cancel a sale on the grounds of fraud, misrepresentation, or concealment by his vendor, fails to establish these grounds of relief, he is not entitled to set up in second appeal a case founded on the implied covenant for title under the Transfer of Property Act, s. 55 sub-s. (2). MAHOMED *v.* SITARAMAYYAR.

[I. L. R. 15 Mad. 50

(2) COMPLETION OF TRANSFER.

2.—*Specific performance—Approval of title by purchaser's solicitor—Contract.*] In a suit for specific performance of a contract for the sale of a house, the entire contract being contained in letters which provided that entry was to be given to the purchaser by a fixed date, and that the title-deeds were to be sent to the purchaser's solicitors, and "on approval of the same the purchase-money to be paid prompt":—*Held*, that the carrying out of the contract was in no way conditional upon the approval of the solicitors, but that their approval was a condition precedent to the prompt payment of the purchase-money without waiting for a conveyance, and that the title was to be investigated and approved in the ordinary way. This case distinguished from *Sreegopal Mullick* v. *Ram Churn Nusker*, I. L. R. 8 Calc. 856. COHEN *v.* SUTHERLAND.

[I. L. R. 17 Calc. 919

3.—*Transfer of Property Act (IV of* 1882), *s.* 54, *para.* 3—*Transfer of Property Act Amendment Act (III of* 1885), *s.* 3—*Immoveable property of value less than Rs.* 100, *transfer of—Suit by purchaser for possession when vendor is out of possession.*] The transfer by sale of tangible immoveable property of a value less than one hundred rupees can be effected only by one of the two modes mentioned in s. 54, para. 3 of the Transfer of Property Act, *viz.*, by a registered instrument or by delivery of possession. *Khatu Bibi* v. *Madhuram Barsick*, I. L. R. 16 Calc. 623, overruled. MAKHAN LALL PAL *v.* BUNKU BEHARI GHOSE.

[I. L. R. 19 Calc. 623

4.—*Transfer of Property Act (IV of* 1882), *s.* 54—*Oral sale with possession — Land worth more than Rs.* 100.] The plaintiff entered into an oral contract to sell certain land to the defendant for Rs. 2,500, and he put him into possession. The

VENDOR AND PURCHASER—*continued.*

(2) COMPLETION OF TRANSFER—*concluded*

defendant made default in payment of the purchase-money. The plaintiff, having professed to cancel the sale on the ground of this default, sued to recover possession of the land with mesne profits:—*Held*, that the sale was not complete under s. 54 of the Transfer of Property Act and the plaintiff was entitled to the relief sought by him. PAPIREDDI *v.* NARASAREDDI.

[I. L. R. 16 Mad. 464

(3) NOTICE.

5.—*Priority—Registration—Possession—Subsequent purchaser with notice obtaining possession and paying off mortgage—Right to recover sum applied in paying off mortgage.*] The plaintiff sued to recover land purchased by him in 1886 from the first defendant, and which was in possession of defendants 2, 3 and 4. The conveyance to the plaintiff was duly registered. The third defendant claimed part of the land under a previous sale to him in 1885 by the first defendant, the conveyance to him being also duly registered. The fourth defendant claimed the rest of the land under a sale to him by the first defendant subsequent to the sale to the plaintiff, of which he had no notice. He relied upon the fact of his having got possession, and he alleged that the purchase-money which he had paid for the land had been applied by the first defendant in paying off a mortgagee who at the date of his purchase was in possession. He claimed, at all events, the repayment of this sum:—*Held*, (1) that the plaintiff was not entitled to the lands in the hands of the third defendant, the latter being a prior purchaser with a deed of conveyance duly registered. (2) That the plaintiff was entitled to the land in the possession of the fourth defendant, who must be taken to have purchased with notice of the plaintiff's prior purchase, inasmuch as the deed of conveyance to the latter was registered. (3) That, if the fourth defendant's purchase-money was applied to pay off a mortgage which plaintiff would otherwise have had to pay, the plaintiff could not equitably recover the land without paying the fourth defendant so much of the purchase-money as was so applied. NARAYAN LAKSHMAN *v.* BAPU VALAD HAIBATRAV.

[I. L. R. 17 Bom. 741

(4) TITLE.

6.—*Implied contract for good title—Suit by vendor for specific performance—Specific Relief Act (I of* 1877), *s.* 25—*Title derived through will of former owner—Necessity for probate—Succession Act (X of* 1865), *s.* 187—*Notice to complete contract—Rescission of contract—Clause in contract requiring vendor to hand over deeds relating to property, construction of.*] By an agreement in writing dated the 20th June 1888, the defendant purchased a certain house in Bombay from the plaintiff for Rs. 6,000. By this agreement the plaintiff agreed that, at the time of the execution of the deed of sale he would hand over to the defendant "the title-deeds, vouchers and bills, whatever there

VENDOR AND PURCHASER—*continued.*

(4) TITLE—*continued.*

may be relating to the said property." The agreement further provided: "The time in respect of this bargain is fixed at two months; within this time we are duly to have everything cleared." In September 1890, the plaintiff filed this suit for specific performance of the agreement. The defendant pleaded: 1st, that the plaintiff had failed to show a good title to the property; 2nd, that the plaintiff had not handed over to him all the deeds and documents relating to the property; 3rd, that he (the defendant) had lawfully rescinded the contract on the 30th August 1890. It appeared that in 1880 the then owner of the property; one *N* had mortgaged it to one *V*, and that on the 26th October 1882 both mortgagor and mortgagee had joined in conveying it to one *C*. This deed, however, had not been registered, and was consequently inadmissible in evidence, and was rejected at the hearing. *C* had, however, after his purchase taken possession of the property and had held it until 1885. On the 6th May 1885, he sold it to *H*. Prior to his sale, *viz.*, in 1883, *N* had died, and left a will appointing *V* his executor, but no probate of this will had ever been obtained. In the sale deed, however, to *H* of the 6th May 1885, *V* had joined as a conveying party both in his own right and as executor of *N*. On the 29th September 1887 *H* sold the property to the plaintiff, who, as already mentioned, sold it to the defendant on the 20th June 1888:—*Held*, that the plaintiff was bound to give the defendant a good title, or, in other words, a title free from reasonable doubt (s. 25 of the Specific Relief Act I of 1877). In the absence of a contract providing that the plaintiff should show only such title as he could give, or of some other special contract as to title, the general law laid down in s. 25 of the Specific Relief Act I of 1877 must prevail.—*Held*, further, dismissing the suit, that the title shown by the plaintiff was not a good title. The conveyance of the 26th October 1882, by the mortgagor and mortgagee to *C* not being registered was not admissible, and could not be referred to, so that it was necessary to regard *N* as still the mortgagor and *V* as still the mortgagee of the property, while *C* had, in some capacity or other, the actual possession That being the state of things, *N* died in 1883, and it was alleged that he had left a will appointing *V* his executor, but no probate of that will had been obtained. The equity of redemption remaining in *N* as mortgagor passed on his death to his executor *V*. On the 6th May 1885, *C* sold the property to *H* (the plaintiff's predecessor) and *V* joined in the deed of conveyance as executor of *N*. But it was necessary for the plaintiff to show not merely that he joined as executor, but that he had a right, as executor, to convey to *H* the equity of redemption which had come to him from *N*. By s. 187 of the Succession Act (X of 1865) the only mode of doing this was by the probate of *N*'s will, and this had not been obtained. If an heir of *N* sued for redemption, the defendant would have no defence, unless he could prove that he had acquired the equity of redemption. For this purpose by s. 187 of the Succession Act (X of 1865) probate would be necessary, and he would consequently be obliged to prove the will and pay duty upon all the property included in it. That would be a liability which the Court could not impose upon a defendant resisting specific performance of a contract like the one made by the plaintiff. Where a vendee ascertained that the title of property sold to him was derived through the will of a former owner which had not been proved.—*Quære*—Whether a notice given by him (the vendee) to the vendor to produce the will and give satisfactory proof of its being the last will of the said owner within four days was a reasonable notice so as to entitle the vendee afterwards to rescind the contract. A contract of sale provided as follows for the handing of the title-deeds of the property to the purchasers:—"And at the time of the execution of the deed of sale you" (*i.e.*, the vendor) "are duly to give us, the purchasers, the title-deeds, vouchers and bills whatever there may be relating to the said property." *Held*, that this clause meant that whatever documents of title were necessary under the terms of the contract, or under the general law, should be handed over by the vendor to the vendee at the execution of the deed of sale. MAHOMED MITHA *v.* MUSAJI ESAJI.

[I. L. R. 15 Bom. 657

VENDOR AND PURCHASER—*continued.*

(4) TITLE—*concluded.*

(5) VENDOR, RIGHTS AND LIABILITIES OF.

7.—*Transfer of Property Act (IV of 1822), s. 55—Implied covenant for title—Acts amounting to waiver of covenant—Possession taken under contract—Right to recover unpaid purchase-money—Lien.*] On 16th August 1885, the defendant, having agreed to purchase a house belonging to the plaintiff, executed an agreement, in which it was stated "that he had this day purchased the house belonging to Ghousiah Begum Sahiba (plaintiff) for Rs. 16,000, that he had paid Rs. 1,000 as an advance and taken possession, that he would pay the balance with interest at the rate of Re. 1 per cent. per mensem within fifteen days, and obtain a sale-deed from the said Begum." The plaintiff at the time of the agreement had not obtained a conveyance of the house to her, and was not able to tender a conveyance to the defendant until January 1887, when she did so. Meanwhile the defendant took possession under the agreement, paying only a portion of the balance of the purchase-money; he also executed certain repairs to the house, and let it to a tenant and enjoyed the rent. It further appeared that shortly after the above agreement he sought to obtain a sale-deed from the plaintiff and attempted to raise a sum of money on a mortgage of the house. On 22nd December 1885 the defendant wrote to the plaintiff demanding a conveyance and giving notice that if the sale be not completed in the following month, the interest on the balance of the purchase-money should cease; but no evidence was given as to any appropriation of the purchase-money by the defendant. In 1887 the plaintiff filed the present suit to recover the unpaid purchase-money with interest at 12 per cent.:—*Held*, that the acts of the defendant amounted to a

VENDOR AND PURCHASER—*continued.*

(5) VENDOR, RIGHTS AND LIABILITIES OF —*continued.*

waiver of the implied covenant for title, and that the plaintiff was entitled to recover the unpaid purchase-money with interest at the agreed rate up to the date of payment, and that he was further entitled to a lien on the property for that amount. GHOUSIAH BEGUM *v.* RUSTAMJAH.

[I. L. R. 13 Mad. 158

8.—*Stoppage in transitu—Railway receipts—Effect of endorsing railway receipts—Title of endorsee of such receipts—Contract Act (IX of 1872), s. 103.*] The firm of *C D* carried on business in Bombay. *A*, the agent of the firm, bought from the first defendant *H* at Bijapur, a quantity of wheat which at *A's* request was on the 28th and 29th May 1889, consigned by *H* to the firm of *C D* at Bombay, on the understanding that the consignees were not to have the wheat until they had paid the *hundis* drawn in respect of it. The wheat was sent to Bombay on the 28th and 29th May 1889, in three consignments, *viz.*, of 56, 104 and 181 bags respectively, and two *hundis* for Rs. 1,000 and Rs. 1,500 respectively payable at sight were drawn by *A* in Bijapur on the firm of *C D* in Bombay, and were given by him to *H* who thereupon handed to *A* the three railway receipts for the three consignments which had been despatched by the first defendant's agent at Bijapur railway station. The *hundis* were sent by *H* to his agent in Bombay for collection. The *hundi* for Rs. 1,000 arrived in Bombay on the 31st May, and was paid on the 1st June. The *hundi* for Rs. 1,500 arrived in Bombay on the 1st June, and was dishonoured on the 2nd June by the firm of *C D*, which afterwards stopped payment and became insolvent. The railway receipts given by *H* to *A* at Bijapur were in the following form: "Received from *H* the undermentioned goods, 181 bags of wheat. This receipt must be produced by the consignee, or the goods will not be delivered; if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. If the consignment, or this railway receipt, is sold one or more times, the endorsement must be a distinct order to deliver to a certain person or firm, and this order must be on a one-anna stamp. If more than one order appear on the face hereof, each order must bear a stamp. I (we) hereby certify that I (we) am (are) aware that the Southern Mahratta Railway has received the abovementioned goods subject to the conditions noted on the back, and that I (we) agree that it should receive them subject to these conditions. (Sender's signature.)" On obtaining these railway receipts *A* sent them at once to the firm of *C D* in Bombay, and on the 31st May 1889, they were endorsed by *C*, a member of the firm, to the second defendant *V* to secure an advance of Rs. 2,000. The endorsement was as follows: "Signature of *C D*. I have sold the delivery, as *per* this receipt, to *V*. The handwriting of *C*." Two consignments (*viz.*, 56 bags and 104 bags) and part of the third

VENDOR AND PURCHASER—*continued.*

(5) VENDOR, RIGHTS AMD LIABILITIES OF —*concluded.*

(*viz.*, 73 bags out of 181) had arrived in Bombay by the 2nd June, in bags bearing *C D's* marks. On that day *V* applied to the Railway Company for delivery, and paid full freight on all three consignments. He was allowed to remove the 55 bags and the 104 bags After having done this he loaded his carts with the 73 bags, which had then arrived, out of the consignment of 181 bags without any objection on the part of the Railway Company, but he was not allowed to take them out of the station yard, and the 73 bags, were consequently unloaded, and together with the balance of the consignment of 181 bags, which subsequently arrived, were retained by the Railway Company. The reason given by the Company's servants for the detention was the receipt of a telegram sent by *H* from Bijapur, on hearing of the dishonour of the *hundi* for Rs. 1,500, directing that the 181 bags should not be delivered. At the trial the Judge found that this telegram had probably been received before all of the 73 bags had been loaded into the carts:—*Held* (1) That there was no such delivery of the 181 bags to *C D's* agent at Bijapur as to deprive *H* of his right of stoppage *in transitu*. (2) That there was such a delivery of the 73 bags at the railway station to *V* as to determine *H's* right of stoppage *in transitu*. It was to be assumed that *H's* telegram did not arrive in time to prevent the bags being placed, with the consent of the Railway Company, on *V's* carts, for it was not until the carts had been loaded that the Company's servants interfered to prevent their leaving the station yard. Before that time the freight for the 73 bags had been paid by *V* and the railway receipt had been given up to the Company duly signed by *V's* servant. Everything had been done on the part of the Company to divest themselves of their lien as carriers; for the mere fact that the carts were still standing in the goods compound of the railway station after the bags had been placed on them could not affect the question, there being no suggestion that the matter as between the Company and *V* had not been completely settled. (3) That the railway receipts were not instruments of title within the meaning of s. 103 of the Indian Contract Act (IX of 1872), and that by endorsing and handing them over, the firm of *C D* did not assign them to *V* within the meaning of the said section. GREAT INDIAN PENINSULA RAILWAY Co. *v.* HANMANDAS RAMKISON.

[I. L. R. 14 Bom. 57

(6) MISCELLANEOUS CASES.

9.—*Specific Relief Act (I of 1877), s. 18 (a)—Transfer of Property Act (IV of 1882), s. 43.*] A member of an undivided Hindu family consisting of himself, his adoptive son and his uncle, sold certain land belonging to the family to the plaintiff. In a suit by the plaintiff for a declaration of his title to, and for possession of, the land, it appeared that the sale was not justified by any circumstances of family necessity; and an objection that was taken to the adoption was overruled and the adoption

VENDOR AND PURCHASER—*concluded.*

(6) MISCELLANEOUS CASES—*concluded.*

held to be valid. During the pendency of the suit the undivided uncle died, having made a gift of his property to his daughter-in-law, which gift was held to be invalid:—*Held*, that under s. 16 (*a*) of the Specific Relief Act, together with s. 43 of the Transfer of Property Act, the plaintiff was entitled to a moiety of the land sold to him. VIRAYYA *v.* HANUMANTA.

[I. L. R. 14 Mad. 459

VERDICT OF JURY.

Col.

1. Power to Interfere with Verdicts ... 1129

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE.

[I. L. R. 13 Mad. 426

See REFERENCE TO HIGH COURT—CRIMINAL CASES.

[I. L. R. 13 Mad. 343

(1) POWER TO INTERFERE WITH VERDICTS.

1.—*Criminal Procedure Code, ss.* 307, 418—*Perversity of verdict—Procedure when Sessions Judge disagrees with verdict—Misdirection*] A jury returned a verdict of guilty against the accused in a trial for dacoity. The Sessions Judge accepted the verdict, although he said he did not agree with it and had charged the jury for an acquittal; he observed that he could not refer the verdict as perverse since there was evidence against the accused which it was open to the jury to believe. The accused appealed to the High Court on the ground (*inter alia*) that the Sessions Judge "ought to have referred the case to the High Court under the Criminal Procedure Code, s. 307":—*Held* that, since there had been no misdirection by the Sessions Judge, and there was some evidence to support the verdict, the High Court had no power to interfere, however absurd the verdict might be considered. QUEEN-EMPRESS *v.* CHINNA TEVAN.

[I. L. R. 14 Mad. 36

2.—*Criminal Procedure Code*, 1882, *ss.* 303, 307, 429—*Power of Judge to put questions to jury under s.* 303 *after verdict delivered — Reference to High Court under s.* 307—*Power of High Court to interfere with verdict — Judges of High Court differing in opinion, reference to third Judge—Letters Patent*, 1865, *cl.* 36—*Practice—Procedure.*] A prisoner was tried for murder and acquitted by a majority of the jury. The Sessions Judge disagreed with the verdict and submitted the case to the High Court under s. 307 of the Criminal Procedure Code (Act X of 1882). The Judges of the High Court (JARDINE and CANDY, JJ.) differing in opinion, the case was laid before a third Judge (SARGENT, C.J.), under s. 429, who held that the verdict of the jury should be set aside and that the prisoner was guilty of murder. *Per* SARGENT, C. J.:—It is the uniform practice of the High Court, in cases referred under s. 307 of the Criminal Procedure Code (Act X of 1882),

VENDOR OF JURY—*continued.*

(1) POWER TO INTERFERE WITH VERDICTS—*continued.*

not to interfere with the verdict of a jury, except when it is clearly and manifestly wrong. There is no true analogy between the discretionary power conferred on the High Court under this section and that which the Courts of law in England have exercised in interfering with the finding of a jury in civil actions by directing a new trial on the ground of the verdict being against the weight of evidence. The practice, therefore, of the latter Courts, although very properly regarded as a guide, cannot be resorted to as affording a fixed rule in the exercise of the powers conferred on the High Court by s. 307. Where a prisoner was charged with murder by administering *dhatura* poison to the deceased, the majority of the jury found him not guilty. After the delivery of the verdict the Sessions Judge questioned the jury, who, in reply to specific questions on the points, stated through their foreman that the majority had doubts (1) whether the accused had fetched *dhatura* from a certain field; (2) whether there was *dhatura* poison in the stomach of the deceased; (3) whether the death of the deceased was caused by *dhatura* poison. The Sessions Judge differed so completely with the jury on the evidence that he submitted the case to the High Court under s. 307 of the Criminal Procedure Code. *Per* JARDINE, J.:—The verdict of acquittal should be upheld. It was not manifestly wrong nor absolutely unreasonable. It was a verdict that reasonable but cautious men might find. The Sessions Judge ought not to have put to the jury, after verdict delivered, the questions which he did put as to their findings on particular points. In so doing the Sessions Judge exceeded the limits of questioning defined in s. 303 of the Criminal Procedure Code. There was no incompleteness nor ambiguity in the verdict and no misconception of any question of law. *Per* CANDY, J.:—Admitting in the present case that the Sessions Judge was wrong in putting any questions to the jury after the verdict was delivered, disregarding the answers to the questions and dealing solely with the evidence and probabilities, there seemed to be no reasonable doubt of the guilt of the accused. The High Court in the exercise of its powers under s. 307 of the Criminal Procedure Code is bound to act upon its own view of the evidence. On a reference by a Sessions Judge the whole case is opened up. When the verdict of the jury is erroneous the High Court must put it aside and exercise the functions of both Judge and jury, giving due weight to the opinion of the Judge as well as to the verdict of the jury. When a case like the present depends upon the inferences to be drawn from two or three facts, neither principle nor statute forbids the Sessions Judge from asking the jury to state a plain concise finding on those facts. Where the Judges of the High Court differed in opinion in a case referred by a Sessions Judge to the High Court under s. 307 of the Criminal Procedure Code the Court (JARDINE and CANDY, JJ.) directed that the case should be laid before a third Judge of the High Court, being of opinion that the Criminal Procedure Code

VERDICT OF JURY—*concluded.*

(1) POWER TO INTERFERE WITH VERDICTS —*concluded.*

over-rules the provisions of cl. 36 of the Letters Patent, 1865. QUEEN-EMPRESS *v.* DADA ANA.

[I. L. R. 15 Bom. 452

VESTING ORDER, EFFECT OF—

See INSOLVENT ACT, s. 7.

[I. L. R. 15 Mad. 372

VICE-ADMIRALTY REGULATIONS OF 1832, APPLICATION OF—

See JURISDICTION—ADMIRALTY AND VICE-ADMIRALTY JURISDICTION.

[I. L. R. 17 Calc. 337

See LETTERS PATENT, HIGH COURT, 1865, CL. 15.

[I. L. R. 17 Calc. 66

VILLAGE COURTS.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—GENERAL CASES.

[I. L. R. 13 Mad. 145

VILLAGE MUNSIF.

See MUNSIF, JURISDICTION OF.

[I. L. R. 15 Mad. 131

VOLUNTARY CONVEYANCE.

See INSOLVENCY — ASSIGNMENTS BY DEBTOR.

[I. L. R. 19 Calc. 223

[I. L. R. 16 Mad. 499

VOLUNTARY PAYMENT.

—Money paid under protest—Right of suit—Contract of indemnity—Contract Act, ss. 124, 141, 142.] The Thakor of Limdi possesses several *talukdari* villages in the Ahmedabad District, for which he pays a lump *jama* to Government. One of these villages was Akru. Disputes arose between the Thakor and the *grassias* of Akru as to the ownership of the village. The Thakor filed a suit against the *grassias*, which was ultimately compromised, and a consent-decree was passed in 1883, providing (*inter alia*) that the Thakor should assign to the *grassias* a moiety of the village; that the *grassias* should hold the same free from all liability to pay the *jama*, and that the Thakor should alone be responsible for all Government demands. In accordance with this decree, a moiety of the village was made over to the *grassias* The Collector demanded *jamabandi* for this moiety. The Thakor intervened, and objected to the demand, on the ground that he paid a lump *jama* for the whole of his *taluka*, including the moiety of the village assigned to the *grassias*. Government, however, passed a resolution, declaring that half of the village belonged to the *grassias;* that from them the Government had a right to levy the *jama;* that the Thakor might, if he chose, pay the same on behalf of

VOLUNTARY PAYMENT—*concluded.*

the *grassias;* and that if it was not paid, it would be recovered by attachment and sale of the *grassias'* half share. The Thakor thereupon paid the *jama* on behalf of the *grassias* for two years, and then filed a suit against Government to recover back the payments he had made, and for a declaration that Government had no right to levy any assessment on any portion of the village beyond the lump *jama* fixed for his *taluka*. This suit was dismissed on the preliminary ground that the Thakor had no cause of action against Government, in respect of any of the reliefs sought, the Court being of opinion that the payments he had made to Government on account of the *grassias* were voluntary, and that he had no interest whatever in the *grassias'* half share of the village:—*Held*, reversing the decision of the lower Court, that the suit would lie. Under the consent-decree, the Thakor stood in the relation of an insurer to the *grassias* from all exactions of Government dues. The payments of *jama* he made on account of the *grassias* were, therefore, not voluntary, but made under protest, and, as such, were recoverable by suit. JASVATSINGJI FATESINGJI *v.* SECRETARY OF STATE FOR INDIA.

[I. L. R. 14 Bom. 299

VOLUNTARY SETTLEMENT.

See ONUS PROBANDI—DEEDS, SUITS TO ENFORCE OR SET ASIDE.

[I. L. R. 15 Bom. 549

WAIVER.

See CIVIL PROCEDURE CODE, s. 258.

[I. L. R. 12 All. 569

See ESTOPPEL—ESTOPPEL BY CONDUCT.

[I. L. R. 18 Calc. 341

[I. L. R. 15 Mad. 82

See FOREIGN COURT, JUDGMENT OF.

[I. L. R. 15 Mad. 82

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS.

[I. L. R. 18 Calc. 99

See JURISDICTION—QUESTION OF JURISDICTION—WAIVER OF OBJECTION TO JURISDICTION.

[I. L. R. 13 Mad. 211

See JURISDICTION—QUESTION OF JURISDICTION—WHEN IT MAY BE RAISED.

[I. L. R. 13 Mad. 273

See LAND ACQUISITION ACT, s. 19.

[I. L. R. 17 Bom. 299

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATE.

[I. L. R. 12 All. 569

[I. L. R. 20 Calc. 74

[I. L. R. 21 Calc. 542

WAIVER—*continued.*

See MALABAR LAW—MORTGAGE.

[I. L. R. 13 Mad. 490
[I. L. R. 15 Mad. 480

——— of covenant for title.

See VENDOR AND PURCHASER—BREACH OF COVENANT.

[I. L. R. 15 Mad. 50

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[I. L. R. 13 Mad. 158

1.—*Objection as to absence of demand for enhanced rent—Objection as to want of parties—Objection taken for first time on appeal.*] Where in a suit for rent at an enhanced rate no objection as to the absence of legal demand for enhanced rent was taken:—*Held*, that the suit was properly tried by the Court of First Instance on the merits. The lower Appellate Court having dismissed the suit on the ground that the *inamdar* was not a party to the suit, a point on which no issue was raised, although it had been taken in the written statement and which was not made a ground of appeal:—*Held*, that the point must be considered to have been abandoned at the trial; it was, therefore, not open to the lower Appellate Court to dismiss the suit on that ground. GOVINDRAV KRISHNA RAIBAGKAR *v.* BALU BIN MONAPA.

[I. L. R. 16 Bom. 586

2.—*Omission to take objection that pottahs and muchalkas had not been exchanged before suit—Suit to recover customary dues payable on account of a chattram.*] In a suit by the District Board in charge of a *chattram* to recover a certain sum as the arrears of various *merais*, being customary dues payable by the defendants for the benefit of the *chattram* on account of lands held by them, the defendants raised no objection on the ground that there had been no exchange of *pottahs* and *muchalkas*, but among other defences they relied upon a plea of limitation:—*Held* (1) that the defendants should be considered to have admitted tacitly that the exchange of *pottahs* and *muchalkas* had been dispensed with. VENKATAVARAGA *v.* DISTRICT BOARD OF TANJORE.

[I. L. R. 16 Mad. 305

3. *Decree payable by instalments, and in default execution for whole amount to issue—Default in payment of instalments—Waiver by plaintiff of right to execute decree—Receipt by plaintiff of overdue instalments.*] By a consent-decree passed in a mortgage suit the defendant was ordered to pay to the plaintiff the sum of Rs. 1,800 by yearly instalments of Rs. 50 payable on the 30th April in each year, and in case of default in payment of any instalment the plaintiff was to be at liberty to execute the decree by sale of the mortgaged property. The defendants failed to pay the first instalment, which fell due on the 30th April 1888, and the plaintiff applied for execution and obtained an order for the sale of the property. In

WAIVER—*concluded.*

order to prevent the sale the defendants on the 13th November, 1888, paid Rs. 60 out of Court, and the application for execution thereupon was allowed to drop. The defendants subsequently made the following payments, *viz.*, Rs. 15 on the 5th June 1889, Rs. 25 on the 12th June 1889, Rs. 15 on the 1st January 1890, and Rs. 50 in the Nazir's office on the 2nd June 1890, which was the day on which the Court opened after the summer vacation, which had begun on the 30th April 1890. On the 6th June 1890, the plaintiff again applied for execution of the decree, which was granted by the Subordinate Judge. On appeal, the District Judge reversed the order, holding that the plaintiff by accepting the above payments had waived his right to execute the decree. On appeal to the High Court:—*Held* that the plaintiff was entitled to execution. The acceptance of the payments did not prove a waiver. They were not accepted on account of the specific instalments in arrears, but on account of the whole decree; and even if they were taken as payments of overdue instalments, they could not by themselves prove a waiver. BALAJI GANESH *v.* SAKHARAM PARASHRAM.

[I. L. R. 17 Bom. 555

WAJIB-UL-ARZ.

See COLLECTOR.

[I. L. R. 15 All. 410

See EVIDENCE—CIVIL CASES — MISCELLANEOUS DOCUMENTS—WAJIB-UL-ARZ.

[I. L. R. 15 All. 147

See MAHOMEDAN LAW—PRE-EMPTION—PROFITS AFTER SALE.

[I. L. R. 12 All. 234

See CASES UNDER PRE-EMPTION.

WAKF.

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

WARRANT.

See INSOLVENT ACT, S. 50.

[I. L. R. 17 Calc. 209

—*Criminal Procedure Code, s.* 96—*Search-warrant—Magistrate, jurisdiction of.*] The accused was charged with the offence of criminal misappropriation of treasure belonging to a temple of which he was alleged to be the trustee. From the complaint, it appeared that some of the treasure belonging to the temple had been buried under a flagstaff in the temple, and the Magistrate was of opinion that the nature of the property so buried had an important and material bearing on the case for the prosecution:—*Held*, the Magistrate had jurisdiction to issue a warrant to search for and produce such property upon information which he considered credible, since there was a complaint before him duly affirmed as prescribed by the Criminal Procedure Code; and that it was not incumbent on him to wait until the evidence

WARRANT—*concluded.*

for the prosecution should have been recorded in the presence of the accused. QUEEN-EMPRESS *v.* MAHANT OF TIRUPATI.

[I. L. R. 13 Mad. 18

WARRANT-CASE.

See PARDANASHIN WOMEN.

[I. L. R. 21 Calc. 588

WASTE.

——, by mortgagee in possession.

See MORTGAGE—ACCOUNTS.

[I. L. R. 15 Mad. 290

WATER, RIGHTS CONCERNING.

See INJUNCTION — SPECIAL CASES — OBSTRUCTION TO RIGHTS OF PROPERTY.

[I. L. R. 16 Bom. 533

See PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.

[I. L. R. 15 Mad. 286

[I. L. R. 14 Bom. 452

See RIGHT TO USE OF WATER.

[I. L. R. 16 Mad. 333

WHIPPING.

—*Whipping Act, VI of* 1864, *s.* 2—*Whipping in lieu of fine or other punishment under the Penal Code* (*Act XLV of* 1860.] When an accused person is sentenced to whipping under s. 2 of the Whipping Act (VI of 1864), the punishment of fine or imprisonment or both cannot be legally inflicted under the Penal Code in addition to the whipping. The word "punishment" in s. 2 of the Act means the total of punishments awardable under the Penal Code. QUEEN-EMPRESS *v.* DAGADU.

[I. L. R. 16 Bom. 357

WHIPPING ACT (VI OF 1864).

See WHIPPING.

[I. L. R. 16 Bom. 357

WIDOW.

See CASES UNDER HINDU LAW—WIDOW.

WIFE.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIFE.

[I. L. R. 19 Calc. 84

See HUSBAND AND WIFE.

[I. L. R. 16 Bom. 630

See LUNATIC.

[I. L. R. 15 All. 29

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO.

[I. L. R. 13 Mad. 17

[I. L. R. 16 Bom. 269

[I. L. R. 13 All. 348

WIFE—*concluded.*

See WILL—CONSTRUCTION.

[I. L. R. 13 Mad. 379

——, Relinquishment of.

See BIGAMY.

[I. L. R. 19 Calc. 327

WILL.

Col.

1. Execution 1137
2. Attestation 1138
3. Validity 1138
4. Revocation 1139
5. Construction 1139

See GUARDIAN—APPOINTMENT.

[I. L. R. 17 Bom. 560

See CASES UNDER HINDU LAW—WILL.

See LIMITATION ACT, 1877, S. 19.

[I. L. R. 15 Mad. 380

[I. L. R. 1 Mad. 366

See MAHOMEDAN LAW—ENDOWMENT.

[I. L. R. 17 Bom. 1

See MALABAR LAW—WILL.

[I. L. R. 14 Mad. 495

See CASES UNDER PROBATE.

——, Construction of—

See LIMITATION ACT, 1877, S. 10.

[I. L. R. 14 Bom. 476

——, Construction of, suit for—

See LIMITATION ACT, 1877, ART. 120.

[I. L. R. 20 Calc. 906

——, Decision as to construction of—

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 20 Calc. 888

——, Decision as to genuineness of—

See RES JUDICATA—ESTOPPEL BY JUDGMENT.

[I. L. R. 16 Mad. 380

[I. L. R. 20 Calc. 906

——, Effect of—

See DEED—CONSTRUCTION.

[I. L. R. 20 Calc. 373

——, Proof of—

See PROBATE—PROOF OF WILL.

[I. L. R. 19 Calc. 65

[L. R. 18 I. A. 132

——, Question of validity of—

See CERTIFICATE OF ADMINISTRATION—PROCEDURE.

[I. L. R. 16 Bom. 712

WILL—*continued.*

(1) EXECUTION.

1.—*Want of proof of due execution and of knowledge by testatrix of contents of will.*] Where the defendant claimed the property in dispute under the will of a Hindu widow, but kept back the evidence which would have clearly established that the mark purporting to be made by the widow, was really made by her or at her desire, and that at the time of the execution the nature and contents of the document were well known to her, the Court refused to act upon it. HARILAL *v.* PRANVALAVDAS PARBHUDAS.

[I. L. R. 16 Bom. 229

2.—*Probate and Administration Act* (*V of* 1881), *s.* 50—*Evidence as to the execution of a will by a person near death.*] On a question of fact, raised in 1887, whether an alleged testator had or had not been able to duly execute his will, as he was said to have done during his last illness, the judgment of the District Court in the affirmative was restored. The judgment of the High Court which would have revoked the probate granted in 1882, was reversed, upon the consideration of conflicting evidence as to the mental capacity of the testator, and as to the genuineness of his signature. ROMESH CHUNDER MUKERJI *v.* RAJANI KANT MUKERJI

[I. L. R. 21 Calc. 1

3.—*Proof of due execution of will where the mental capacity of testator is in dispute—Rules for decision of such cases—Presumption—Duty of Appellate Court in deciding on evidence of witnesses.*] In all cases in which the evidence is conflicting, it is the duty of a Court of Appeal to have great regard to the opinion formed by the Judge in whose presence the witnesses gave their evidence, as to the degree of credit to be given to it; and probably the advantage of hearing the witnesses give their evidence is of special value where there is conflict between them as to the mental capacity of a person whose conduct they have observed, and whose state of mind they depose to: for the original Court has not merely the better opportunity of judging of the truthfulness of the evidence from the manner in which it is given, but also of judging how far the witnesses possess those qualities on which depends much of the value of evidence given in good faith, *viz.*, power of observation, power of judgment, accuracy of expression, and general intelligence, which are of special importance in cases where the execution of a will is disputed on the ground that at the time the will was alleged to have been made, the mental capacity of the testator was such that it was doubtful whether the will could have been "duly executed." "Due execution" of a will implies not only that the testator was in such a state of mind as to be able to authorize, and to know he was authorizing, the execution of a document as his will, but also that he knew and approved of the contents of the instrument; and in such cases of disputed execution the Judge should consider and express an opinion upon both these questions. In ordinary cases execution of a will by a competent testator raises

WILL—*continued.*

(1) EXECUTION—*concluded.*

the presumption (sufficient, if nothing appears to the contrary, to establish) that he knew and approved of the contents of the will. Also under ordinary circumstances the competency of a testator will be presumed if nothing appears to rebut the ordinary presumption: ordinarily, therefore, proof of execution of the will is enough. But where the mental capacity of the testator is challenged by evidence, which shows that it is, to say the least, very doubtful whether his state of mind was such that he could have "duly executed" the will as he is alleged to have done, the Court ought to find whether upon the evidence the testator was of sound disposing mind and did know and approve of the contents of the will. Where this had not been done, the Appellate Court after considering the whole evidence held, contrary to the decision of the lower Court, that the will was not proved and refused probate. WOOMESH CHUNDER BISWAS *v.* RASHMOHINI DASSI.

[I. L. R. 21 Calc. 279

(2) ATTESTATION.

4.—*Succession Act* (*X of* 1865), *s.* 50, *cl.* 3—*Initials of witness.*] *Semble*:—If the attesting witnesses affix their initials at the time of witnessing the execution of a will, it is a sufficient compliance with the terms of s. 50 of the Succession Act. AMMAYEE *v.* YALUMALAI.

[I. L. R. 15 Mad. 261

(3) VALIDITY OF WILL.

5.—*Blank spaces left in body of will—Alterations and erasures in will—Presumption—Pencil writing subsequent to the execution of the will—Intention of testator.*] The circumstance that blank spaces are left in the body of a will, is no objection to its being a valid will. If a will contains alterations and erasures, the presumption will be that they were made after the will was executed; and, if there is no evidence rebutting that presumption, they will form no part of the will. The lower Court having declined to grant probate of a will (which it held to be proved), on the ground that it was an incomplete will, being of opinion that the blanks, alterations and cancellations in the will showed that the deceased intended it to be a draft, and not the final expression of his wishes:—*Held*, that the will being one which did not require to be signed by the testator, probate should be granted to include a pencil addition proved to have been made by an attesting witness at the desire of the testator, but excluding all other additions, erasures or cancellations. PANDURANG HARI VAIDYA *v.* VISHNU VINAYAK KANE.

[I. L. R. 16 Bom. 652

6.—*Will in excess of power of Hindu widow.*] A Hindu widow made a will disposing of property, of which under an award she had only the use during her life, and to which the plaintiff, her son, was entitled after her death. While she was still living the plaintiff filed this suit, praying that the

WILL—*continued.*

(3) VALIDITY OF WILL—*concluded.*

will might be declared invalid. The defendants were the testatrix and those who took under the will. While the suit was pending, the testatrix died:—*Held*, that the will should be declared to be invalid so far as it operated to defeat the award. MAGANLAL PURUSHOTTAM *v.* GOVINDLAL NAGINDAS.

[I. L. R. 15 Bom. 697

(4) REVOCATION.

7.—*Evidence as to revocation of a will—Onus of proof of revocation of will.*] A will, duly executed, is not to be treated as revoked, either wholly or in part, by a will which is not forthcoming, unless it is proved by clear and satisfactory evidence that the will contained either words of revocation or dispositions so inconsistent with those of the earlier will that the two cannot stand together. It is not enough to show that the will which is not forthcoming differed from the earlier one, if it cannot be shown in what the difference consisted. It is also settled that the burden of proof lies upon him who challenges the existing will. These propositions are of general application. MIRZA *v.* UMDA KHANAM. MIRZA *v.* GUNNA KHANAM.

[I. L. R. 19 Calc. 444

[L. R. 19 I. A. 83

(5) CONSTRUCTION.

8.—*Legacy whether to be paid out of particular fund or out of general assets—Demonstrative legacy.*] Payment of legacies, or gifts of stipends, having been refused by the representatives of the testatrix, on the ground that she had no power to dispose of the fund out of which the will must be construed to direct their payment:—*Held*, on a consideration of the whole will, that the words of the gift were wide enough to charge them upon the whole of her moveable estate; also, that if the words of the will were to be taken in a more restricted sense, the gift of the stipends must be regarded as a demonstrative legacy, and in that view they would be payable out of the general estate, on failure of the particular fund pointed out. MIRZA v. UMDA KHANAM. MIRZA v. GUNNA KHANAM.

[I. L. R. 19 Calc. 444

[L. R. 19 I. A. 83

9.—*Absolute gift—Repugnant gift over—Indefiniteness of gift—Reputed wife—Marriage, proof of.*] On the construction of a will which was as follows:—"I hereby declare all former wills cancelled. I desire that my wife should obtain possession of all my property and enjoy the benefit of all moneys that may accrue until her death, when I wish that whatever may remain shall be used for the education of the children of the Eurasian and Anglo-Indian community. I desire that this will be administered by the Official Trustee of Madras":—*Held*, (1) that the reputed wife should take under the will without strict proof of the marriage, no fraud being imputed to her in the matter of the marriage; (2) that the gift to the wife was absolute and the gift over bad for repugnancy. ADMINISTRATOR-GENERAL OF MADRAS *v.* WHITE.

[I. L. R. 13 Mad. 379

WILL—*continued.*

(5) CONSTRUCTION—*continued.*

10.—*Perpetuities, rule against—Superstitious uses—Trust for masses—Executor, assent of—Vesting of bequest.*] An Armenian died in Madras in 1836, leaving a will whereby she appointed executors and bequeathed a certain sum "that the income thereof be given for perpetual masses for the benefit of my soul and for the souls in purgatory," and she also bequeathed, *inter alia*, Rs. 42,000 to her grand-daughter for life, and provided that in the event of her marrying and having children she could bequeath to them the said Rs. 42,000, but in the event of her dying without issue, Rs. 14,000 out of the said Rs. 42,000, should be subtracted and given to her husband, and the remaining Rs. 28,000 should be added to the first-mentioned bequest, and the income thereof be similarly given for masses. The executor with probate gave effect to the first-mentioned legacy. By a settlement made in contemplation of the marriage of the grand-daughter, the subject of the second legacy was settled as provided in the will except as to the Rs. 14,000, as to which it was declared that in the event of there being no issue of the marriage, and of the wife surviving the husband and dying without marrying again, it should be divided between the residuary legatees of the testatrix. The husband was a party to the settlement, as also was the executor of the testatrix who was one of the trustees of the settlement. The marriage having taken place, a suit was brought by the husband and wife against the trustees, and a decree was passed under which the trustees were relieved of their office, and the trust funds paid into Court with the direction that interest accruing thereon be paid to the wife until further order. The husband died without issue, and subsequently in 1890 the wife died not having re-married. The Administrator-General of Madras took out letters of administration to administer the estate left unadministered of the testatrix, and the Rs. 42,000 above referred to were paid over to him:—*Held*, by SHEPHARD, J., that the sum of Rs. 14,000 by reason of the settlement, but not otherwise, fell into the residue of the estate of the testatrix. *Held*, by COLLINS, C.J., and HANDLEY, J., affirming SHEPHARD, J:—(1) that the sum of Rs. 28,000 formed unadministered assets of the estate of the testatrix; (2) that the bequest for masses was void as infringing the rule against perpetuities. COLGAN *v.* ADMINISTRATOR-GENERAL OF MADRAS.

[I. L. R. 15 Mad. 424

11.—*Succession Act (X of 1865), ss. 68, 105, 159—Trust fund to be called after testator's name—Perpetuities, rule against — Creation of fund, and dispositions except directions for making it a perpetuity, held valid—'Personæ designatæ,' bequest to persons as—Vesting of legacy, time of—Income*

WILL—*continued.*

(5) CONSTRUCTION—*continued.*

of fund, gift of—Tenancy-in-common—Joint tenancy—Advancement out of minor legatee's share for his benefit, power of—Vested interest, liable to be divested by condition subsequent—Precatory trust, expression of wish held not to create—Patent deficiency as to objects of bequest—Failure of legacy—Charitable uses, void bequest to.] Where by his will a testator directed the establishment in the Bank of Madras by the executor and trustee of the will, of a fund to be called after the testator's name, the "Garratt Trust Fund," and directed "that such trust fund shall never be removed from deposit in the said Bank of Madras at Madras so long as that Bank shall exist," and "that 'The Garratt Trust Fund' shall be a continuing fund to all time" and that the interest therefrom should be enjoyed by certain legatees and "the same shall be inherited by any child or children of them hereafter from time to time and from one generation to another in accordance with all legal rights":—*Held*, that there was nothing illegal about the creation of this fund, except the direction that the securities representing it should never be received from deposit in the Bank of Madras, which, as an attempt to create a fund in perpetuity, was invalid; but that this did not prevent the intention of the testator to create and endow the fund from being carried out, and that the legatees took an absolute interest. The testator bequeathed "to my grandchildren by my said late daughter *E W*, also to my grandson *F W M* and to his step-brother *G W M*" in equal shares a certain fund. *Held*, that this was a bequest to the testator's grandchildren by his late daughter *E W* not as a class, but to them individually as *personæ designatæ*. *Held*, also, that, under the terms of the will, the testator's said grandchildren by the late *E W*, and *F W M* and *G W M* took vested interests in their respective shares in the said fund from the death of the testator; that the gift to them of "the benefit, interest and profit" of the fund was a gift of the *corpus* of the fund by virtue of s. 159 of the Indian Succession Act; that they took as tenants-in-common, not as joint tenants; and that under a power given to the executor to make disbursements from the said fund for certain purposes for the benefit of *F W M* in connection with his going to and returning from England the executor was not authorized to apply, towards those purposes, more than *F W M's* one-ninth share in the said fund, as it was not the intention of the testator to give *F W M* a benefit out of that fund over and above that share, and that the executor, in making disbursements for the purposes specified, was only empowered to trench upon the principal of that share if the income, as applied under the power of disbursement for *F W M's* support and maintenance in England, were not sufficient. *Held*, also, that under the terms of the devise in the third and fourth clauses of the will of a certain house and premises to *F W M*, the devisee took on the testator's death a vested interest in that property, liable to be divested in the event of his dying under the age of twenty-one years. *Held*, also, that under the terms of the devise in the fifth and sixth clauses of the will of a certain house and

WILL—*continued.*

(5) CONSTRUCTION—*continued.*

premises and furniture to the children of the testator's late daughter *E W* (who was dead at the date of the will), there was an absolute gift to the children of *E W* of the testator's whole interest in that property, and that such gift was not controlled by the directions in the latter part of the fifth clause that the house should not be sold until the youngest grandchild attained the age of eighteen years, which must be regarded merely as an expression of the wish of the testator and not as a precatory trust, and was of no legal effect; and that the children of *E W* who were living at the testator's death did not take as joint tenants, but took as *personæ designatæ*, each an equal share in the property, which vested in them on the death of the testator, and therefore the share of one of them, *E G W*, who had survived the testator, but died subsequently, having vested in *E G W*, passed to *E G W's* representative, the ninth defendant. In the sixteenth clause of the will the testator directed his executor and trustee out of a certain sum of Rs. 500 to "disburse various petty pensions to some poor people who have been mentioned to him" (the executor and trustee) "by me." *Held*, that there was a deficiency on the face of the will as to the objects of this bequest, and by s. 68 of the Indian Succession Act no extrinsic evidence could be admitted as to the intention of the testator, and that this legacy therefore failed and fell into the undisposed of residue. *Held*, also, that the bequest in the seventeenth clause of the will of Rs. 10,000 to the support of the testator's Temperance and Reading Rooms for European pensioners and the Poor Widows' Quarters attached thereto, being a bequest to charitable uses, was void under s. 105 of the Indian Succession Act, as the testator had nearer relatives than nephews, and the will was executed less than twelve months before his death. ADMINISTRATOR-GENERAL OF MADRAS v. MONEY.

[I. L. R. 15 Mad. 448

12.—*Joint tenancy-in-fee—Life estate—Intention of testator—Restricted enjoyment, direction as to.*] A testator devised his estate, should his wife remain his widow, for the general benefit of his wife and her child then living, and any other children to be born to him of his said wife before or after his death. He also provided that should his wife remain his widow, she should have a full life-interest in the estate, and should not be annoyed with any vexation about shares during her lifetime, but that after her death her children and their descendants should take *per stirpes;* and in the event of his wife not remaining his widow and her child or children being living, then the estate should go for the general benefit of his children in equal shares when of the age allowed by law. And in the event of his said wife contracting a second marriage, and his children dying before marriage and without children and under age, his wife should take half of his estate and the testator's brother the other half, and in the event of the brother dying without children, the testator's wife should take the whole estate. The

WILL—*concluded.*

(5) CONSTRUCTION—*concluded.*

testator's wife remained his widow until her death, her children having all predeceased her without being married:—*Held*, that the intention of the testator by the first devise was to give an absolute estate to his wife and children jointly, and that the remaining clauses of the will were merely intended to restrict the mode in which they were to enjoy the gift. HALIBURTON *v.* ADMINISTRATOR-GENERAL OF BENGAL.

[I. L. R. 21 Calc. 488

13. — *Duress — Forfeiture — Condition of residence.*] A testator by his will directed that if any of the female members of his family, either from misunderstanding or from any other cause, should live in any other than a holy place for more than three months, except for the cause of pilgrimage, they should forfeit their rights under the will. The plaintiff, a widowed daughter-in-law of the testator, and a minor, was removed from his house by her maternal relations and brother with the aid of the Police, and resided for more than three months with her mother:—*Held*, that under the circumstances the plaintiff's absence did not work a forfeiture. *Clavering* v. *Ellison*, 7 H. L. Cas. 707, referred to. TIN COURI DASSEE *v.* KRISHNA BHABINI.

[I. L. R. 20 Calc. 15

WITHDRAWAL OF APPEAL.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 15 Bom. 370

WITHDRAWAL OF APPLICATION FOR EXECUTION.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWER OF COURT.

[I. L. R. 12 All. 179, 392
[I. L. R. 18 Calc. 462, 515, 635
[I. L. R 15 Mad. 240

WITHDRAWAL OF CRIMINAL CASE.

See MAGISTRATE, JURISDICTION OF — WITHDRAWAL OF CASES.

[I. L. R. 14 Mad. 399
[I. L. R. 15 Mad. 94

WITHDRAWAL OF SUIT.

See RES JUDICATA — RELIEF NOT GRANTED.

[I. L. R. 21 Calc. 265

———, Order allowing—

See APPEAL—DECREES.

[I. L. R. 18 Calc. 322
[I. L. R. 15 All. 169

See SUPERINTENDENCE OF HIGH COURT —CIVIL PROCEDURE CODE, S. 622.

[I. L. R. 15 All. 169

WITHDRAWAL OF SUIT—*continued.*

1.—*Civil Procedure Code*, 1882, *s.* 373—*Summons not served on defendant—Suit for damages—Civil Procedure Code* (*Act XIV of* 1882), *ss.* 97, 477, 491 —*Arrest of defendant before judgment under s.* 477 *of Civil Procedure Code* (*Act XIV of* 1882)—*Subsequent application by plaintiff under s.* 373 *of Civil Procedure Code* (*Act XIV of* 1882) *for leave to withdraw suit—Right of defendant to appear at hearing although summons not served upon him —Compensation for arrest—Rule of Court No.* 64—*Practice — Procedure.*] The plaintiff sued the defendant in Bombay for damages for breach of contract. The suit was filed on the 13th May 1890. The summons was not served on the defendant, but on the 16th May the plaintiff's agent procured his arrest before judgment. On that day he was brought before a Judge of the High Court, and was at once discharged. When the case subsequently came on for hearing, the plaintiff applied, under s. 373 of the Civil Procedure Code (Act XIV of 1882), for leave to withdraw the suit, with liberty to file a fresh suit on the same cause of action. The defendant's Counsel objected, and claimed either that the plaintiff should continue his suit to a hearing, or that the suit should be dismissed with costs, and that compensation for his arrest should be awarded to the defendant under s. 491 of the Civil Procedure Code. The plaintiff contended that, inasmuch as the summons had not been served on him, the defendant was not entitled to appear, and that no compensation could be awarded to him:—*Held* (1) that inasmuch as the plaintiff had by a legal process brought the defendant before the Court, the defendant had the right to appear at the hearing of the case, although no summons had been served upon him, and that he was entitled to object to the suit being dismissed under Rule of Court No. 64; (2) that under the circumstances the defendant was entitled to compensation for his arrest under s. 491 of the Code of Civil Procedure; (3) that the plaintiff might withdraw the suit under s. 373 of the Civil Procedure Code with liberty to bring a fresh suit on payment of the costs incurred by the defendant in the present suit. SYED ALI (SULTAN OF ZANZIBAR) *v.* ADIB.

[I. L. R. 15 Bom. 160

2.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 373—*Institution of fresh suit.*] Where *A* instituted a suit to establish his right to sell certain property in satisfaction of a decree against *B*, but withdrew the suit without having obtained leave to bring a fresh suit, and subsequently instituted another suit to establish his right to sell the same property in satisfaction of another decree against *B*:—*Held*, that the second suit was not barred by the provisions of s. 373 of the Code of Civil Procedure. KAMINI KANT ROY *v.* RAM NATH CHUCKERBUTTY.

[I. L. R. 21 Calc. 265

3.—*Civil Procedure Code* (*Act XIV of* 1882), *s.* 373 —*Withdrawal of suit without permission to bring fresh suit—Application of s.* 373 *of the Civil Procedure Code, to suits in Revenue Courts—Act X of* 1859.] Section 373 of the Civil Procedure Code

WITHDRAWAL OF SUIT—*concluded.*

(Act XIV of 1882) does not apply to suits before the Revenue authorities under Act X of 1859, that Act being a complete Code in itself. RADHA MADHUB SANTRA *v.* LUKHI NARAIN ROY CHOWDHRY.

[I. L. R. 21 Calc. 428

MOKUNDA BULLAVKAR *v.* BHOGABAN CHUNDER DAS.

[I. L. R. 21 Calc. 514

WITNESS. *Col.*

1. Civil Cases 1146
(*a*) Persons competent or otherwise to be Witnesses ... 1146
(*b*) Summoning and Attendance of Witnesses 1146
2. Criminal Cases 1147
(*a*) Persons competent or otherwise to be Witnesses ... 1147
(*b*) Examination of Witnesses ... 1147

See COMMISSION—CIVIL CASES.

[I. L. R. 15 Bom. 209

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—EVIDENCE, MODE OF TAKING, WITNESSES, &C.

[I. L. R. 21 Calc. 29

——, Compelling to answer.

See EVIDENCE ACT, S. 132.

[I. L. R. 21 Calc. 392

——, Competency of—

See LAND ACQUISITION ACT, 1870, S. 19.

[I. L. R. 17 Bom. 299

See OATHS ACT, S. 13.

[I. L. R. 16 Bom. 359
[I. L. R. 16 Mad. 105

——, Deposition of—

See EVIDENCE—CRIMINAL CASES—DEPOSITIONS.

[I. L. R. 18 Calc. 129
[I. L. R. 21 Calc. 392
[I. L. R. 15 Mad. 63

See LIMITATION ACT, 1877, S. 19.

[I. L. R. 16 Mad. 220

——, Examination of—

See CRIMINAL PROCEDURE CODE, S. 540.

[I. L. R. 14 All. 242

See EVIDENCE ACT, S. 132.

[I. L. R. 21 Calc. 392

——, Impeaching credit of—

See EVIDENCE ACT, S. 155.

[I. L. R. 17 Calc. 344

WITNESS—*continued.*

—— not producing document.

See CONTEMPT OF COURT—PENAL CODE, S. 175.

[I. L. R 13 Mad. 24

——, Privilege of—

See DEFAMATION.

[I. L. R. 16 Mad. 235
[I. L. R. 17 Bom. 127, 573

See LIBEL.

[I. L. R. 14 Bom. 97

—— to will.

See WILL—ATTESTATION.

[I. L. R. 15 Mad. 261

(1) CIVIL CASES.

(*a*) PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

1.—*Mamlatdar under land acquisition proceedings acting as assessor and witness.*] On a reference to the Collector under the Land Acquisition Act the mamlatdar acted as an assessor appointed by the Collector, and was also examined as a witness as to the value of the land. But no objection was taken to his acting as an assessor. The District Judge eventually upheld the Collector's award. On an application under s. 622 of the Civil Procedure Code (Act XIV of 1882):—*Held*, that a person who is appointed an assessor under s. 19 of the Land Acquisiton Act (X of 1870) performs *quasi*-judicial functions, and is, therefore, incompetent to testify as a witness in the same proceedings. SWAMIRAO *v.* COLLECTOR OF DHARWAR.

[I. L. R. 17 Bom. 299

(*b*) SUMMONING AND ATTENDANCE OF WITNESSES.

2.—*Civil Procedure Code*, 1882, *s.* 159.] Under s. 159 of the Civil Procedure Code (Act XIV of 1882), a party to a suit is entitled, as of right, to obtain summonses for his witnesses any time before the day fixed for the disposal of the suit. BAI KALI *v.* ALARAKH PIRBHAI.

[I. L. R. 15 Bom. 86

3.—*Adjournment for attendance of witnesses—Civil Procedure Code (Act XIV of* 1882), *s.* 156—*Discretion, exercise of—Witnesses, attendance of—Power of High Court on second appeal.*] On the day fixed for the hearing of a suit, the defendant applied for process against certain of his witnesses who had been summoned, but who had failed to attend, asking for an adjournment to obtain their attendance. This application was refused and the case was proceeded with. The plaintiffs' evidence was recorded and that of one of the defendants; the defendants being unable to produce further evidence, the Court recorded that the case was closed and that judgment would be delivered on the following day, the 31st December. On the day following the defendants produced certain witnesses and asked that they might be examined. This

WITNESS—*continued.*

(1) CIVIL CASES—*concluded.*

(*b*) SUMMONING AND ATTENDANCE OF WITNESSES—*concluded.*

application was rejected, and judgment was subsequently delivered in favor of the plaintiffs:—*Held*, *per* PETHERAM, C.J.—That the omission to examine the defendants' witnesses on the 31st December was a substantial error in procedure, and that the Munsif had therefore exercised his discretion wrongfully. *Per* GHOSE, J.—That although there was some doubt whether the Court on second appeal could interfere in a point of discretion, yet this doubt was not strong enough to justify an expression of opinion contrary to that arrived at by the Chief Justice MONI LAL BANDOPADHYA *v.* KHIRODA DASI.

[I. L. R. 20 Calc. 740

See TAYLOR *v.* SARAT CHUNDER ROY CHOWDHRY.

[I. L. R. 20 Calc. 745 note

(2) CRIMINAL CASES.

(*a*) PERSONS COMPETENT OR OTHERWISE TO BE WITNESSES.

4.—*Evidence Act* (*I of* 1872), *s.* 118—*Evidence of a witness illegally pardoned by the Police—Meaning of "accused" in s.* 342 *of the Code of Criminal Procedure* (*Act X of* 1882).] During the course of a Police investigation into a case of housebreaking and theft, several persons were arrested, one of whom, named *H*, made certain disclosures to the Police, and pointed out several houses which had been broken into by his accomplices. Thereupon the Police discharged him, and made him a witness. At the trial he give evidence against his accomplices, who were all convicted:—*Held*, that the evidence of *H* was admissible under s. 118 of the Evidence Act, though he had been illegally discharged by the Police. *Held*, also, that by the word "accused" in s. 342 of the Code of Criminal Procedure (Act X of 1882) is meant a person over whom the Magistrate or other Court is exercising jurisdiction. QUEEN-EMPRESS *v.* MONA PUNA.

[I. L. R. 16 Bom. 661

(*b*) EXAMINATION OF WITNESSES.

5.—*Witness for Crown tendered at Sessions trial who had not been examined by Committing Magistrate.*] At a trial before the High Court or the Court of Session, the Crown cannot demand as of right that any witness who was not examined by the Committing Magistrate either before commitment, or, under s. 219 of the Code, after it, should be called and examined. The Court may call and examine such a witness if it considers it necessary in the interests of justice. QUEEN-EMPRESS *v.* HAYFIELD.

[I. L. R. 14 All. 212

6.—*Witness for Crown "not called" at Sessions trial though examined before the Committing Magistrate—Duty of the prosecution with regard to the production of such witness.*] At a trial before the

WITNESS—*continued.*

(2) CRIMINAL CASES—*continued.*

(*b*) EXAMINATION OF WITNESSES—*continued.*

High Court in the exercise of its original criminal jurisdiction it is not the duty either of the prosecution or of the Court to examine any witness merely because he was examined as a witness for the Crown before the Committing Magistrate, if the procecution is of opinion that no reliance can be placed on such witness' testimony. All that the prosecution is bound to do is to have the witnesses who were examined before the Committing Magistrate present at the trial so as to give the Court or Counsel for the defence, as the case may be, an opportunity of examining them. *In the matter of the petition of Dhunno Kazi*, I. L. R. 8 Calc. 121 and *Empress of India* v. *Kaliprosonno Doss*. I. L. R. 14 Calc. 245, approved; *Empress* v. *Grish Chunder Tulukdar*, I. L. R. 5 Calc. 614; and *Queen* v. *Ishan Dutt*, 6 B. L. R. Ap. 88: 15 W. R. Cr. 34, dissented from. QUEEN-EMPRESS *v.* STANTON.

[I. L. R. 14 All. 521

7.—*Obligation of Court of Sessions to examine all witnesses sent up by the Committing Magistrate.*] It is the duty of a Sessions Court to examine all the witnesses sent up by the Committing Magistrate. That Court is not justified in rejecting any of the witnesses so sent up unless it has good reason to believe that such witness came into the Court-house with a predetermined intention of giving false evidence. QUEEN-EMPRESS *v.* BANKHANDI.

[I. L. R. 15 All. 6

8.— *Witnesses under examination—Threatening of witnesses by Court.*] It is illegal on the part of a Court to threaten witnesses with the penalties of the law unless they are evidently giving wilfully false evidence or persistently refusing to give evidence of facts which must be within their knowledge. QUEEN-EMPRESS *v.* HARGOBIND SINGH.

[I. L. R. 14 All. 242

9.—*Cross-examination—Recalling witnesses for further cross-examination after charge—Criminal Procedure Code* (*Act X of* 1882,) *s.* 257.] There is under s. 257 of the Criminal Procedure Code no absolute right of cross-examination which would enable the accused to recall and cross-examine the witnseses for the prosecution, no matter how completely and fully they have already been cross-examined. Where the witnesses for the prosecution were fully cross-examined and a charge framed against the accused, and after an adjournment for ten days the witnesses for the defence were examined and cross-examined, and on the day on which the judgment was to be delivered, an application under s. 257 of the Code of Criminal Procedure was made on behalf of the accused, asking that process should issue for the witnesses for the prosecution to be recalled and further cross-examined:—*Held*, that if the Magistrate was of opinion that the application was made with the intention and for the purpose of vexation or delay or for defeating the ends of justice, he

WITNESS—*concluded.*

(2) CRIMINAL CASES—*concluded.*

(*b*) EXAMINATION OF WITNESSES—*concluded.*

was right in refusing the application. It lies upon the party who thinks himself aggrieved to show that the ends of justice have been in some way frustrated in consequence of the refusal to recall the witnesses. It is necessary to be very careful that persons on their trial should not be prejudiced; but it is also necessary, on the other hand, to see that proceedings in the Criminal Courts are not hampered in a needlessly carping and litigious spirit, losing sight of the main purpose of those proceedings, and giving over-attention to matter of mere form. NILKANTA SINGH *v.* QUEEN-EMPRESS.

[I. L. R. 20 Calc. 469

10.—*Cross-examination—Right of co-accused to cross-examine witness called by another co-accused for defence where their cases are adverse—Evidence Act (I of* 1872), *s.* 137.] One accused person may cross-examine a witness called by another co-accused for his defence when the case of the second accused is adverse to that of the first. RAM CHAND CHATTERJEE *v.* HANIF SHEIKH.

[I. L. R. 21 Calc. 401

WRITTEN STATEMENT.

See ADMISSION.

[I. L. R. 14 Bom. 516

See SET-OFF.

[I. L. R. 15 Mad. 29

——, Denial of title in.

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[I. L. R. 15 Mad. 123

—*Inconsistent pleas—Plea allowed on appeal inconsistent with written statement.*] A Hindu wrote his will devising certain ancestral property to his wife and on the following day he registered it and took the plaintiff in adoption. The testator died shortly afterwards. It was found that the plaintiff's natural father was aware of the dispositions contained in the will and that the testator would not have adopted the plaintiff but for the consent of the natural father to those dispositions. The defendants who claimed under a gift from the wife had denied the adoption in their written statement, and on appeal raised the further plea that the adoption, if any, was conditional on the provisions of the will being acquiesced in:—*Held*, that the defendants were not precluded from succeeding on the latter of these pleas notwithstanding it was inconsistent with their written statement. *Mahomed Buksh Khan* v. *Hoseini Bibi*, I. L. R. 15 Calc. 684: L. R. 15 I. A. 81, distinguished. NARAYANASAMI *v.* RAMASAMI.

[I. L. R. 14 Mad. 172

WRONGFUL ATTACHMENT.

See ATTACHMENT — LIABILITY FOR WRONGFUL ATTACHMENT.

[I. L. R. 17 Calc. 436

[L. R. 17 I. A. 17

WRONGFUL CONFINEMENT.

See COMPOUNDING OFFENCE.

[I. L. R. 21 Calc. 103

See UNLAWFUL COMPULSION.

[I. L. R. 19 Calc. 572

WRONGFUL CONVERSION.

See PLEDGOR AND PLEDGEE.

[I. L. R. 19 Calc. 322

WRONGFUL DISTRAINT.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.W.P.

[I. L. R. 12 All. 409

See RIOTING.

[I. L. R. 13 Mad. 148

WRONGFUL GAIN OR LOSS.

See THEFT.

[I. L. R. 15 Bom. 344

WRONGFUL RESTRAINT.

See COMPOUNDING OFFENCE.

[I. L. R. 21 Calc. 103

ZEMINDAR.

——, Purchase by, of patni interest, effect of—

See MERGER.

[I. L. R. 19 Calc. 760

——, Proof of title of—

See OWNERSHIP, PRESUMPTION OF.

[I. L. R. 15 Mad. 101

——, Rights of—

See SALE FOR ARREARS OF RENT — RIGHTS AND LIABILITIES OF PURCHASERS.

[I. L. R. 20 Calc. 247

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